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# INQUIRY INTO THE SOURCES OF KARAITE HALAKAH\*

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I will now turn to the differences known or supposed to have existed between the Sadducees and the Pharisees and examine Karaite halakah on these disputed points.

The interpretation of Lev. 16, 12-14 constituted one of the earliest differences between the Pharisees and the Sadducees. The Sadducean view and practice was (1'osefta Yoma 1, 7) that the kindling of incense in the vessel (v. 13) was to take place before the high-priest entered the Holy of Holies, maintaining that otherwise the high-priest when entering it would see the Ark,—which contravenes כי בענין אראה על הכפרת (v. 2).<sup>49</sup> The Pharisaic ruling and practice was that the incense is to be put on the coals in the Holy of Holies itself (T. K. Aḥare Mot, 3; Tosefta Yoma 1. 7; Yoma 19b; 53a; p. *ib.*, 1, 5 (39a)). The Karaites agree with the Pharisaic interpretation of these verses. See Mibḥar, *ad loc.* (27a): ונתן את ונוי: אחר; הכנסו מיד שלא יראה הכפרת; so also כתר תורה, *ad loc.* (42b): בנראה שקטורת מכניסה על ידי כלי אחר ובהכנסו נותנה על המחתה.

The authenticity of Megillat Taanit (ed. Neubauer, ch. 4), according to which the interpretation of וירקה

\*Continued from New Series, vol. II, 517 ff.

<sup>49</sup> See כתר תורה, Lev. 41b, for the anti-Sadducean interpretation of this verse: וואין הטעם שלא אראה רק בענין הקטורת. Comp. Geiger, *Jüd. Zeitschrift*, II, 29 ff., and Oppenheim, *Bet Talmud* IV, 269 ff.

בפניו (Deut. 25, 9) constituted a difference between the Pharisees and the Sadducees, is admitted by Geiger (*Jüdische Zeitschrift*, II, 28; comp. *ib.*, 95). The latter in their adherence to the letter of the Law required the יבמה to spit in his face (ממש) while the Pharisees in case of *halisah* caused her to spit before him (Yebamot 106b). The Karaites agree with the Pharisees in the interpretation of יורקה בפניו בארץ (22a).<sup>50</sup> See Mibhar, *ad loc.* כנגד היבם וי"ל בפני הנעל. Comp. טירת כסף, *ad loc.*

The responsibility of a master for damage caused to others by his servants constituted, as already recorded in Mishnah (Yadain 4, 7), an issue between the Pharisees and Sadducees. The latter applied the law of Ex. 21, 35 also to damage done by one's servants. The Karaites agree with the Pharisees and reason like them. See נן עדן (180c): נוקי עבד ואשת איש אשר היוקום אחרים משלמין אבל הם: פטורים.... אבל במה שיש תשלומין אינו דין שיפרע הבעל או האדון... ואין להקיש נוקי העבד בנוקי השור כי העבד יש לו דעת ואפשר שירע לבבו; מאדוניו ויפסיד ממון אחרים וימצא משלם; comp. G. Hölscher, *Der Sadduzäismus* (Leipzig 1906), 30 ff.; Geiger, *Urschrift*, 143 ff.

The Pharisees and the Sadducees differed on the law of inheritance. According to Num. 27, 8 when there are sons and daughters, the sons are the heirs. But if the son died before his father, the son leaving a daughter, the Sadducees held that the daughter shares with her brother's daughter the inheritance. The Pharisees held that the son and all his descendants, male or female, should precede the daughter in the right of inheritance (Meg. Taanit 5,

<sup>50</sup> See Rapoport, דברי שלום ואמת (Prag. 1861), 11 ff.; Weiss, I, 117, note 2. Josephus (*Ant.* IV, 8, 23) translates with the Sadducees בפניו literally. See, however, Anan (Harkavy, 116): וירקא באפיה.

(Neubauer, II, 10); Tosefta Yadaim 2, 20; Baba Batra 115b-116a; p. *ib.*, 8, 1).<sup>81</sup>

The Karaite law of inheritance, as they themselves confess (גן ערן, 165*b*), is confused, and difference of opinion exists among them on essential points. The prominent ninth century Karaite, Daniel al Qumṣi, held that the daughter when sons are left receives a third of the inheritance (Pinsker, II, 85; comp. אדרת אליהו, 101*a*).<sup>52</sup> Joseph b. Abraham ha-Kohen was of the opinion that the daughter's right to inheritance is equal to the son's (*ib.*, 101*c*; גן ערן, 165*d*); this, he reports in the name of David b. Boaz, was also the view of many others.<sup>53</sup> These views disagree with

<sup>81</sup> See V. Aptowitz, *Die syrischen Rechtsbücher und das Mosaisch-Talmudische Recht*, Wien 1909, 82. His assertion that the law of Timotheos quoted there is Sadducean is mistaken. The equal rights of a daughter's son and another daughter's daughter never constituted an issue between the Pharisees and the Sadducees.

<sup>52</sup> Wreschner, 41, suggests that it was taken by some of the Karaites from the Samaritans, who follow the Mohammedan law and give the daughter, when there is a son, a third of the inheritance. The Karaite law: מִמּוֹן כָּל שֶׂאֵין לוֹ (משאת בנימין, Benjamin Nahawendi, קרוב וגואל הוא לכהן הגדול המשרת המקדש, 2d; so also Hadassi, Alph. 369) might have also been borrowed from the Samaritans (see Wreschner, 42). For a similar view, see Schechter, *Jewish Sectaries*, I, p. 9, lines 14-15. Tradition makes no provision for the case of a man dying without heirs and considers it impossible (Sifre to Num. 5, 8; Baba ḥamma 109a). According to Philo (II, 291) the tribe inherits his property.

<sup>53</sup> An opinion identical with that of Joseph b. Abraham is quoted in p. Baba batra 8, 1 in the name of חכמי גוים. Aaron b. Elias (ערן, 166a) states that by "many others" David b. Boaz meant the Sadducees and reads in Baba batra 115b אפילו נשיא בישראל אין שומעין לו כל האומר תירש בת עם הבן instead of כל האומר תירש בת עם בת הבן; see also the reading in Neubauer's edition of Megillat Taanit (l. c.); comp. Hoffmann, *ZfhB.*, IX (1905), 135. For the view of Anan. on ירושת הבת, see Hadassi, *Alph.* 256 (98b); comp. Grätz, *Geschichte*, V<sup>4</sup>, 187; D. H. Müller, *Syrisch-römische Rechtsbücher u. Hamurabi*, 31.

The opinion of Wreschner, 39, that חכמי גוים refers to the Samaritans

the Sadducean as well as with the Pharisaic practice. Those Karaites who do accept the traditional view that daughters do not share with sons in inheritance,—and this is the view of nearly all later Karaites (Hadassi, Alph. 252, 256; גן עדן, 166a, and מבחר and כתר תורה to Num. 27, 8)—agree also with the *Pharisees* against the Sadducees, that the son's children, female as well as male, are the sole heirs even when the deceased has left daughters. See Hadassi, Alph. 252 and 256: ואמר וכן אין לו והעברתם את נחלתו לבתו בתורתך: "פתרונו בן קודם לבת וכל יוצאי ירכו של בן קודמים ... ולפי זה בת הבן קודמת מן הבת: 102d אדרת אליהו לבת; so also ופרחי הבן, בין זכר ובין נקבה: 41b: בחר תורה, Num. 41b: קודמין מן הבת.

Hadassi (Alph. 97) informs us that the Sadducees "absolutely forbade divorce." Geiger (*Zeitschrift*, 1836, p. 99) doubted the authenticity of this report. Kırkısani reports it in the name of David b. Merwan Almukameş (ed. Harkavy, 304, l. 3; 305, l. 12). S. Holdheim in his מאמר האישות (Berlin 1861, p. 43 ff.) finds support for this assertion in the fact that the Karaites, who, as he believes with Geiger, descend from Sadducees, also prohibit divorce except in case of suspicion of adultery in the wife, and quotes (p. 53, note) אדרת אליהו. Holdheim, however, misstated the facts. The author of אדרת אליהו (96c) as well as all the other later Karaites (Hadassi, Alph. 366 (141c); מבחר and כתר תורה on Deut. 24, 1; Gan Eden 154d and לבוש מלכות (A. Neubauer, *Aus d. Petersburger Bibliothek*, 54)), does not like the School of Shammai (Gittin 90a) take ערות דבר (Deut. 24, 1) to mean sexual immorality, but an

is forced. He and Aptowitzer (*JQR.*, XIX, 609) overlooked Shabbat 116b. For the expression נשיא בישראל, see החלוץ, VIII, 78; נשיא בישראל may also refer to R. Gamaliel II who was the supposed litigant (Shabbat 116b).

"intolerable thing" as, for instance, the wife's becoming (after the marriage) deaf or blind or contracting an incurable disease; anything of such a nature is legitimate cause for divorce. But even this view was rather an innovation of later Karaites. As we now know, according to Anan, marriage may be dissolved at the wish of either of the parties, by a writ of divorce. See his *ספר המצות* (Harkavy, 119): *וקא אמא והיה אם לא תמצא חן בעיניו כי מצא בה ערות דבר דאי לא שפרא בעיניה דאשכח בה מילי סניתא ולא ניהא ליה בניה מגריש כה בין דלא צבי בה הוא ובין דלא צביא ביה היא*.<sup>54</sup>

Benjamin Nahawendi (*משאת בנימין*, 5b), considered the right of divorce to be vested in the husband alone. Samuel al Magrebi tells us of the following three opinions among the Karaites as to the husband's right of divorce. He says (MS. 97b): *כי מצא בה ערות דבר: דע כי התחלפו: החכמים בזה הדבר מהם מי אמר כי ישוב להדת וענינו לא תמצא חן בעיניו כאשר מצא בה כי היא מקלה במצות . . . ומהם אמר כי זה המאמר יכלול כל אשר ימצא האיש באשתו מאשר ימנע האיש כי תמצא האשה חן בעיניו ואין הבדל אם יהיה המום מפני דרכי הדת אם מפני דרכי העולם מפני היצירה או הצורה ומהם מי לא ישים זה המאמר תנאי בנדרש כי בדעתם מאז יאמר אני שנאתי [את אשתי] יאמר לו תן לה המוהר המאוחר שלה ותגרשנה וגם ראיתי את אנשי זמני דורכים בזה הנהתיב.*

<sup>54</sup> See Harkavy in Grätz, *Geschichte*, V<sup>4</sup>, 487. This view of Anan seems to have escaped Poznański, *ZfhB.*, XI (1907), 72. It is possible that Anan in this law raised to the dignity of a biblical law the *תקנת מורדת* enacted about a century before Anan. See Sherira Gaon, *Epistle*, ed. Neubauer, 35, l. 11; *id.*, *חמדה גנוזה*, Resp. 140; comp. Grätz, V<sup>4</sup>, 129-130; Weiss, *Dor*, IV, 5, 9, 37; A. Schwarz, *Moses b. Maimon*, Leipzig 1908, 342-345. Hadassi (Alph. 335) stands alone in his opinion that *מום לאחר קדושין* is not sufficient cause for divorce. For the Samaritan interpretation of *ערות דבר* comp. *MGWJ.*, LIV (1910), 433; Philo and Josephus agree with the view of Beth Hillel (Ritter, 70, n. 1).

The practice of the Karaites of his day thus coincided with the opinion of R. Akiba<sup>55</sup> (Gittin 90a): אפילו מצא אחרת: נאה הימנה.

The preparation of the Red Heifer was, according to Num. 19, 9, to be done by one ceremonially clean: ואסף איש טהור. The interpretation of איש טהור constituted one of the essential differences between the Pharisees and Sadducees. The Pharisees considered the unclean man who has bathed in the day time, and awaits sunset, in accordance with Lev. 22, 7, to be טהור and eligible to prepare the ashes of the Red Heifer. The Sadducees considered him unclean

<sup>55</sup> Still more erroneous is the assertion of Holdheim (*l. c.*, 57 ff.), that the Karaites considering the marital bond similar to that of God and Israel allow the husband to forgive and take back an adulterous wife, while Tradition demands the dissolution of the marriage by a writ of divorce. *The reverse is true.* According to the Karaite law, even the אנוסה is considered defiled and forbidden to her husband whereas the talmudic law requires divorce only in case the husband be a priest (Ketubbot 51b; the reason of the opinion of אבואה דשמואל (*l. c.*) is שמא סופה ברצון; for Ps.-Jon. on Deut. 22, 26: אלא גברא יפטיירינה מיניה בגיטא; see Chayes, אמרי בינה, 9; comp. also משאת בנימין) 5a): שיערי צדק, IV, 4, 4). See Benjamin Nahawendi (5a): ואם אשת איש היא ואנוסה דינה כמו של מאורשה אבל על בעלה אסורה; שני' משכילי נ"ע אמרו בין אנוסה: אחרי אשר הושמאה; so also Hadassi, Alph. 329: אנוסה: בין מופתה אסורה על בעלה; comp. also Alph. 364 (135b); 152b; 155a; Jepheth b. Ali held that in case of defilement no writ of divorce is necessary; for the marriage is *ipso facto* dissolved (גן עדן, 155a); but see Hadassi, Alph. 5. Holdheim (*l. c.*, 112) contends that the Sadducees did not consider a captive (שבוייה) even when אשת להן defiled. Yet the Karaites hold that even an אשת ישראל is forbidden to her husband. See Hadassi, Alph. 365 (141d). Josephus (*Contra Apionem* I, 7) agrees with Tradition (Ketubbot 27a). Holdheim (*l. c.*, 53, note) states that while the Karaites consider man and woman equal in their spiritual duties, the Mishnah (Berakot 3, 2) confines the duty of prayer to man. The *very* Mishnah which he quotes states that women are included in the obligation of prayer.

and barred him from assisting in the preparation of it.<sup>56</sup> This issue could have arisen only if we interpret והיה לפנות in Deut. 23, 12 to mean "from the time that the sun begins to decline" allowing the unclean to take the ablution after midday,<sup>57</sup> a period thus intervening between the purification bath and sunset, during which he was considered by the Pharisees clean and suitable to prepare the אפר פרה.

Most of the Karaites, however, take לפנות ערב to mean the last part of the day and assign the ablution to the hour which immediately precedes sunset (see Harkavy, ספר המצות, לענן 143, n. 9); see also כתר תורה, *ad loc.* (27a): והיה לפנות ערב: סמוך לערב וכן לפנות בקר לא כדעת בעלי הקבלה שהטעם מעת ערב. שיפנה חערב יהיה ראוי לרחוץ כל היום זה טבול יום. See *ib.*, Lev. 39b; Hadassi, Alph. 295 (110c). So also אדרת אליהו, 71d: ובטהרת המים אמרו החכמים כי צריך להיות סמוך לערב כאשר כתוב בבעל קרי והיה לפנות ערב ירחץ במים ... וביארו החכמים שפנות ערב סמוך לערב ... לכן פסקו שטהרת הטמאים כולם במים צריך להיות סמוך ועת: So also Samuel al Magrabi (MS., 191b ff.): לפנות ערב ערב התחלפו החכמים בו ... ואמר זולתם כי הוא בקרוב הערב והוא כשיעור שיתרחץ הטמא ויצא וישאר מעט מהשמש על ראשי ההרים כמאמר הכתוב וטמא עד הערב אחר מאמרו ורחץ במים. Comp. also the anti-Karaite ordinance of Maimonides (ed. Friedlaender, *MGWJ.*, 1909, 476): ומנהם מן תתואכי בהדא אלסבב אן יכון: 110b, c, d; 115 c, d; comp. also Sahl b. Maṣliāḥ, Pinsker, II, 28. According to them, such state of uncleanness as

<sup>56</sup> Parah 3, 7; Tosefta, *ib.*, 3, 8; Yoma 2a and parallels; comp. Grätz, III<sup>4</sup>, 447 ff. G. Hölscher, *Der Sadduzäismus*, Leipzig 1906, 20-21 wholly misunderstood this controversy.

<sup>57</sup> Comp. Geiger, *ZDMG.*, XX, 567; Maim., מוקדמות, ח' 1, 6, and ראב"ד *ad loc.* and כ"מ *ad loc.*



טבול יום—one who has bathed (for purification) in the *day time*—does not exist at all; the Karaites thus differ in the question of טבול יום as much from the Sadducees as they do from the Pharisees.

The law of false witnesses constituted one of the earliest differences between the Pharisees and the Sadducees. The latter restricted the application of Deut. 19, 19 to the case when the accused has already been executed in consequence of their false testimony. The Pharisaic view and practice were that false witnesses are liable to equal punishment after the judgment had been passed but not carried out (Sifre, *ad loc.*, ed. Friedmann, 109b; Mak-kot, 6; Tosefta Sanhedrin 6. 6; p. *ib.*, 6, 3 and parallels).

Geiger (*Urschrift*, 140) and Weiss (I, 138) consider apocryphal the report of the Baraita Makkot 5b that the Pharisees did not apply the law of false witnesses in case the wrongly accused was already executed. The issue between the Pharisees and Sadducees was, according to them, the case where the testimony was found to be false *before* the execution of the alleged offender.<sup>58</sup>

Most of the Karaite exegetes and codifiers agree with the Pharisees in this disputed point; see Mibḥar, *ad loc.* (15b): ואימתי יעשה לו באשר זמם; אחר שיגמר הדין; מירת כסף, comp.

<sup>58</sup> Comp. also Pineles, *של תורה*, 172; Friedmann, *Beth Talmud*, V, 233 ff.; Herzfeld, *Geschichte*, III, 387; Graetz, III<sup>8</sup>, 99. The Book of Susannah was according to Brüll, *Jahrbücher*, III (1877), 63 ff. (comp. also Hoffmann, *Magasin*, IV (1877), 157 ff.) written as a protest against this Sadducean practice. For the view of Philo see Ritter, 26, n. 1. Josephus accepts the Pharisaic view (Weyl, 85). For the Samaritans see Wreschner, Intro., p. VIII, note 5. For attempts to explain the talmudic view הרגו אין נהרגים (see Geiger, *Urschrift*, 140, note), which is also the view of the Karaite Aaron b. Joseph (Mibḥar, Deut. 16a) see *Magasin*, XX (1893), 88 ff.; Rapoport, *ואמת שלום* ואמת, p. 7. L. Löw, *Ges. Sch.*, I, 284, is to be corrected accordingly.

... ואף על פי שבעדות הזוממים לא נהרג המועד : (let. 95) *ad loc.* וכן אמרו: 194d, גן עדן, comp. יקבלו הענש מיד ב"ד כאשר זממו לעשות בעלי הגמרא אין העדים הזוממין נהרגין אלא אחר שנגמר הדין : לא הרג נהרגין הרגו אין נהרגין וחכמי הקראין אומרים לא כל שכן והם אומרים ... ועירך שאם היה אמת יהרג הוא : . . . . . Deut. 26a, l. 1 : comp. also Hadassi, Alph. 357, and see, however, 177c גן עדן, ואם לא נהרג אינם חייבים ואפילו : . . . שנפסק דינו ועדיין לא נהרג.

The two daily burnt offerings (עולת תמיד) being public offerings, had to be provided at the expense of the public, from the *תרומת הלשכה* of the half-shekel tax (Sheḥalim 4, 1; Sifre I, 142).<sup>59</sup> The Sadducees claimed (basing it on the singular form את הכבש אחר תעשה in Num. 28, 4) that the daily burnt offerings are to be offered by individuals. Menahot 65a and Megillat Taanit, 11 (Neubauer, *Mediaeval Jewish Chronicles*, II, 3) : שהיו צדוקים אומרים מביאים תמידים : משל יחיד זה מביא שבת אחד זה מביא שתי שבתות וזה מביא שלשים יום comp. Geiger, *Urschrift*, 136.

The Karaites, in agreement with the Pharisees, consider the burnt offering a public sacrifice to be offered at the expense of the people, though they hold that, in all duties incumbent on the people at large, if an individual anticipates it, the duty is discharged. See Mibḥar to Ex.

<sup>59</sup> So also Josephus, *Ant.* III, 10, 1 and *Contra Ap.*, II, 6. Philo also considers the קרבן תמיד a 'public sacrifice (II, 239). Comp. M. Zipser, *Flavius Josephus' "Ueber das hohe Alter des Jüdischen Volkes gegen Apion,"* Wien 1871, 113. The fact that King Hezekiah defrayed the expense of the תמיד (II Chron. 31, 3; comp. Schürer, II, I, 284, Engl. transl.) is not against this view, as even according to Tradition an individual is allowed to bring the תמיד, if he first turns it over to the people (Rosh hashanah 7a); see Maim., כלי המקדש, 8, 7 : כשרים ובלבד שימסרם לציבור, comp. מושנה למוך, *ad loc.* and ר"ש to Parah 2, 3. This escaped Ratner, ספר היובל in honor of N. Sokolow, Warsaw 1904, 502.

27, 20 (57a): וזו המצוה אם קדם אחד לעשותה נפטרו כל ישראל: Similarly to Num. 19, 2; comp. טירת כסף, *ad loc.*: אף על פי שהיא מתחייבת להעשות מממון של צבור יספיק בהבאתה על ידי איש אחד כתר תורה Ex. 95b, and אדרת אליהו, 101b.

The view of Geiger (*Jüdische Zeitschrift*, I, 24; *Nachgelassene Schr.*, V, Heb., 161; *ZDMG.*, XX, 560 and elsewhere; comp. Poznański, *REJ.*, XLV, 63) that the Samaritan interpretation of Deut. 25, 5 ff., which was also held by some early Karaites, goes back to the Sadducees, cannot be accepted. The Samaritans took החוצה (v. 5) to be an adjective, referring to אשת המת translating it "the outer wife," i. e. the betrothed who had not as yet entered her husband's house, and restricted the law of levirate marriage to the betrothed woman whose husband died without living issue (Kiddushin 75b-76a; p. Yebamot 1, 6 and Giṭṭin 1, 4; comp. Frankel, *Vorstudien*, 197, note b). If the Sadducees, like the Samaritans, would have applied the law of *yibbum* only to the betrothed, but not to the widowed wife, marriage would have been prohibited with them, as the cause of the exclusion of the Samaritans from the Jewish community and of marriage being prohibited with them, was that they referred the law of levirate marriage to the betrothed only. See Kiddushin 75b.<sup>60</sup>

An agreement of great importance, as Geiger thinks, between the Sadducees and the Karaites is their rejection of the device known as *'erub*, by which restraint on walk-

<sup>60</sup> Against this view of Geiger see also L. Löw, *Gesammelte Schriften*, III, 162; Geiger's opinion (*Urschrift*, 148) that many of the Pharisees were against intermarriage with Sadducees is not proved; see, to the contrary, N. Krochmal, מורה נבוכי הזמן, Warsaw 1894, 65; L. Löw, *l. c.*, 160.

ing and carrying on the sabbath is lightened.<sup>61</sup> Geiger sees in the institution of 'erub a result of the Pharisaic desire to imitate the priestly sacerdotal meals eaten in חבורות. The sacrificial meals constituted a religious act. To afford the priests an opportunity to assemble for such repasts, which were usually held on holidays and sabbath, the regulations concerning walking distances and carrying food from one precinct to another (מרשות לרשות) were disregarded. The Pharisees also instituted common repasts (originally of companies of ten people, as in the eating of the Paschal Lamb). These meals, though of profane food, חולין, were eaten על טהרת הקדש and in connection with them were practised rites and observances usually associated with sacerdotal meals. To facilitate such gatherings, i. e. participation by those who lived outside the city limits in such consecrated meals (usually held on holy days), they devised the fiction of 'erub, through which members could come from distances and food be carried from one precinct to another on sabbath. The Sadducees opposed this device (Erubin 6, 2; *ib.*, 68b). The rejection of this "evasion law" by the Samaritans (Erubin 31b) and the Karaites (Hadassi, Alphabeta 182, 183, 242, see also authors quoted below) thus goes back to their common source—the Sadducees. This hypothesis of Geiger is due to misunderstanding the above quoted Mishnah. As has been shown by I. Halevy in his *Dorot Ha Rishonim* (Ic, pp. 436 ff.; so also Weiss, *Dor*, I, 119),<sup>62</sup> the Sadducees are mentioned there as מי שאינו מורה

<sup>61</sup> *Jüd. Zeitschr.*, II, 24, *Nachg. Schriften*, III, 290; V, Heb., 145 ff. and elsewhere. Against the view of Geiger concerning חבורות of ten people to which he ascribes much importance (see references above and *Urschrift*, 121 ff.; *Nachg. Schr.*, IV, 107), see A. Büchler, *Der Galiläische Amhaarez*, 208, n. 2; comp. also, for Ps.-Jon. on Exod. 12, 4, Frankel, *MGWJ.*, 1846, 114.

<sup>62</sup> לא היו מורים [הצדוקים] בעירוב והכחישו איסור הוצאה בשבת (עירובין פ"ד מ"א). Weiss overlooked, however, *Horayot* 4a; comp. also Geiger himself,

בעירוב, which means "one who does not believe in the device of 'erub," i. e. one who ignores as invalid the rabbinic injunctions against יציאה חוץ לתחום בחצר and הוצאה on sabbath. Thus, while the Sadducees did not consider יציאה and הוצאה forbidden, the Karaites prohibit them and reject the "evasion law" of 'erub (Hadassi, *l. c.*, and authors quoted below). The early Karaites Anan,<sup>63</sup> Benjamin Nahawendi (גן עדן, 31a ff.) and Sahl b. Maṣṣiah (*l. c.* and אדרת אליהו, 29c) interpreting Ex. 16, 29b שבו איש תחתיו literally, forbade<sup>64</sup> leaving the house on sabbath save for physical needs

*Urschrift*, 147-8; *Nachg. Schr.*, V, Heb., 147, ll. 5 ff. This is also the meaning of מי שאינו מורה בעירוב in Erubin 31b (concerning the Samaritans). See Niddah 57a and Rashi, *ad loc.*, s. v. לִאֲתוּי; see also Wreschner, 15; comp. S. Hanover, *Das Festgesetz d. Samaritaner nach Ibrahim ibn Jakūb*, Berlin 1904, 21. For the Sadducees, comp. also Schürer, Div. II, vol. II (Engl. transl.), 37, n. 102.

<sup>63</sup> See ערן, 31b; אדרת אליהו, 29c; comp. also Harkavy, ס'המ לענן, 129, n. 1; 139, n. 3. This is also the view of Hadassi; see Alph. 144 (54c) and 247 (94d). Some Karaites forbade, like the later Samaritans (Wreschner, 15), leaving the house on sabbath even for physical need or a religious object; see Hadassi, Alph. 144. See also Reifmann, *Beth Talmud*, I, 385; Harkavy, *Magasin*, VI (1879), 121.

<sup>64</sup> The later Karaites, including Levi b. Jepheth ha-Levi, Joshua b. Judah, Samuel al-Magrabi, and Aaron b. Elias, accepted the rabbinic (see Mekilta to Exod. 16, 29; Alfasi and Asheri to Erubin 1, end; Tosafot *ib.*, 17b, s. v. לֵאוּ; Maim., שבת, 27, 1) restriction of the sabbath way to two thousand yards outside the city limits, תחום שבת, making thereof a biblical ordinance.

It may also be pointed out here that *only* R. Akiba, the champion of the New Halakah according to Geiger (*Urschrift*, 153 ff. and elsewhere), is of the opinion that the restriction of אֵלֶּפֶים אַמָּה is biblical (Soṭah 5, 3)! See also Schechter, *Jewish Sectaries*, I, p. 10, l. 21; p. 11, l. 6.

It was also R. Akiba, the antagonist of the Sadducean-Samaritan halakah according to Geiger, who held the Samaritans to be genuine converts, גְּרֵי אֲמָת, גְּרֵי (Kiddushin 75b; comp. Frankel, *Einfluss*, 245), while R. Eliezer and R. Ishmael who, according to this view, partly adhered to the Sadducean-Samaritan halakah, held the Samaritans to be only lion-converts, גְּרֵי אֲרִיּוֹת; see Kiddushin, *l. c.*; Shebiit 8, 10; p. *ib.*, and פְּנֵי מִשָּׁה *ad loc.*

or some religious object.<sup>65</sup>

Geiger (*Jüd. Zeitschr.*, II (1863), 43 ff.) holds that the Sadducees prohibited the sacrifice of the Paschal Lamb (קרבן פסח) on sabbath. Derenbourg (*Orientalia*, I, 184 ff.), Holdheim (מאמר האישות, 160 ff.), Chwolson (*Das letzte Passamahl Christi*, Leipzig 1908, 28 ff., 140, 161; comp. Bacher, *JQR.*, VI, 680 ff. and *REJ.*, XLV, 176 ff.) claim that the similar view held by Anan and some other early Karaites goes back to the Sadducees. See against this view A. Schwarz, *Die Controversen der Schammaiten und Hilleliten*, I, Wien 1893, p. 17, note. It may also be pointed out that it is hardly probable that the Sadducees distinguished, as Geiger (*l. c.*) and Chwolson (*l. c.*, 21; 29, n. 2; 43, 140) claim, between the "perpetual offering" (קרבן תמיד) as a *public* offering (קרבן צבור), and the קרבן פסח as a *private* offering (קרבן יחיד), since, according to the Sadducees themselves, the קרבן תמיד was also to be offered by an individual. See Menahot 65a; comp. Geiger, *Urschrift* 136, and above. Moreover, many early Karaite authorities agree with Tradition that the קרבן פסח takes precedence over the sabbath. So Benjamin Nahawendi (סה"מ לענין, 153; comp. also the views of Daniel al Kūmṣī and Jepheth b. Ali, Harkavy, *l. c.*). So also Aaron b. Joseph (Mibḥar, Exod. 16b); Samuel al Magrabi (ed.

<sup>65</sup> The Karaites differ among themselves also on the source of אמור מלאכה on sabbath. Jepheth b. Ali (Pinsker, II, 21) and Joseph al Baṣīr (אדרת אליהו, 29d ff.) follow Tradition and consider it to be a מלאכה and therefore forbidden. Kīrkisani thinks that carrying is not מלאכה and its prohibition is *traditional* and attested by Jerem. 17, 22 (גן עדן, 26b; comp. also the views of Joshua b. Judah and of Aaron b. Elias, גן עדן, *l. c.*). Levi b. Jepheth stands alone in his opinion that the carrying of light things is not forbidden (אדרת אליהו, 29c).

Junowicz, *Fast-und Festgesetze d. Karäer*, Berlin 1904, 6); Elias Bashyazi (אדרת אליהו, ע' פסח, ch. 8).

Geiger (*Nachgel. Schriften*, III, 315; V, Heb., 149 ff.; *ZDMG.*, XVI, 717 ff.; comp. Cohn, *ZDMG.*, XLVII, 678) holds that the Karaite view that עור נבלה, like בשר נבלה, communicates uncleanness goes back to Sadducean Tradition. It escaped Geiger that the *earliest* Karaites, the Ananites, were of the opinion that no separate part of the carcass is capable of communicating uncleanness. See אמנם החכמים נחלקו על שיעור הנבלה : ע' טומאה, אדרת אליהו מהם אמרו והם העניינים שנבלה בכלל תאמר על כלל הגוף המת אמנם חלקי המת לא יקרא נבלה .... והנה לפי דעתם אם יברת אבר אחד מהבהמה לא תקרא נבלה. So also גן עדן, 99b, end; comp. also *JQR.*, XIX, 151, l. 11; for Anan's opinion see also Jacob b. Reuben (Pinsker, II, 84); Harkavy, סה"מ לענן 59; 153, n. 12; Schechter, *Jewish Sectaries*, II, 23; comp. also *REJ.*, XLV, 56, n. 4. See also Geiger, *Urschrift*, 135, that the Boethusians allowed ספרים תפילין ומזוזות to be written on עור which proves their agreement with Tradition that עור נבלה is not מטמא. Geiger's interpretation of Shabbat 108a (*N. S.*, V, Heb., 151) is forced; comp. also Schorr, החלזין, IV, 33.

The view of Geiger (*Jüd. Zeitschr.*, I, 51; II, 27; *N. S.*, III, 316; V, Heb., 138 ff.; 163 ff.) that the Samaritan and Karaite interpretation of Lev. 12, 4, 5 (ימי טהרה) goes back to the Sadducees is not proved. See Wreschner, *l. c.*, 38, in favor of whose view it may be pointed out that the *Book of Jubilees* (3, 13) seems to agree with Tradition that a woman during ימי טהרה is excluded only from מקדש and ביאת מקדש; see also Schwarz, *l. c.*, 94 ff.

The only view common to the Boethusians (a latter-day Sadduceeism) and the Karaites is the interpretation of

ממחרת השבת and the time of the Feast of Weeks. The Feast of Weeks is, according to Lev. 23, 15-16, to be observed on the fiftieth day after the waving of the sheaf. The "wave-sheaf," עומר, is to be offered "on the morrow after the sabbath" ממחרת השבת יניפנו הכהן. Tradition interprets ממחרת השבת "from the day after the holy convocation," i. e. from Nisan the sixteenth. The Boethusians interpreted ממחרת השבת to mean the day after the weekly sabbath that occurs during the feast of the unleavened bread, so that Pentecost is celebrated always on the first day of the week (Menahot 65a; Megillat Taanit 1, 2; Sifra on Lev. 23, 15 and parallels). This is also the Samaritan<sup>66</sup> and Karaite<sup>67</sup> interpretation of ממחרת השבת.

But to adduce this Karaite view as evidence of the Karaite descent from the Sadducees is hardly justifiable. As Geiger himself (*Urschrift*, 138-139); Wellhausen (*Die Pharisäer und die Sadducäer*, 59 ff.); Schürer (II, 334); Poznański (*Abraham Geiger, Leben u. Lebenswerk*, 365) pointed out, this Boethusian interpretation of ממחרת השבת does not go back to Sadducean tradition but originated in the animosity of the Boethusian priests-aristocrats against the Pharisees after having been deprived by them of their

<sup>66</sup> See Wreschner, *Intr.*, XXIII; S. Hanover, *Das Festgesetz der Samaritaner nach Ibrahim ibn Ja'kūb*, Berlin 1904, text, p. VII; comp. *ib.*, 62-63; Geiger, *Nachg. Schr.*, III, 294-296. The Samaritans and the Karaites differ, however, in the following essential question, namely, when to count if the fifteenth of Nisan occurs on Sunday. The Karaites begin on it to count the seven weeks. The Samaritans would begin counting on the first of the next week and thus offer the עומר *post festum*. See Geiger, *l. c.*, 296; Hoffmann, *Leviticus*, II, 164. For the Falashas, see A. Epstein, *Eldad ha-Dani*, 154 ff.; *id.*, *REJ.*, XXII (1891), 13 ff.

<sup>67</sup> See on it lastly Poznański, *Gedenkb. zur Erin. an D. Kaufmann*, 173 ff. Some Karaites trace their interpretation of ממחרת השבת to R. Phinehas b. Jair. See Pinsker, II, 16-7; comp. Frankl, *MGWJ.*, 1876, 115 ff.; Epstein, *Eldad ha-Dani*, 158, note.



prerogative to regulate the calendar and was never carried out in practice.

The only agreement between the Sadducees and the Karaites known to us is their rejection of "water libation," נסוך המים, on the Feast of the Tabernacles.<sup>68</sup> See Jefeth b. Ali (Pinsker, II, 23): נסוך המים לא צוה יושב הכרובים לא בפנים: לא בחוצה: האומרים במצות נסוך המים הוסיפו על מאמרו הוא הדבר... מירת כסף; see also Mibḥar, Num. 28b, and אשר ה' לא דברו... *ad loc.*

Thus, as we have seen, in all the differences between the Sadducees and Pharisees recorded in Talmud and Megillat Taanit the Karaite halakah (as far as Karaite opinion is known to us), with the exception of ממחרת השבת and נסוך המים, either agrees with the Pharisees against the Sadducees, or is in itself undetermined by reason of divergent views among the Karaites themselves.<sup>69</sup>

The mention by the Karaites Kīrkisani and Ḥassan b. Mashiah of a work (or works) composed by Zadok the founder of the Sadducean party, is considered by many scholars<sup>70</sup> proof of some relation existing between Sadduceism and Karaism.

Schechter has established close relation of "*Fragments of a Zadokite work*" discovered and published by him (*Jewish Sectaries*, Cambridge 1910, vol. I.) with the כתאב

<sup>68</sup> Sukkah 48b; Yoma 26b; comp. Maim. Commentary on Sukkah 4, 9. See on it lastly Feuchtwang, *MGWJ.*, 1911, 49 ff.

<sup>69</sup> See also Grätz, V<sup>4</sup>, 495. This examination of the relation of the Karaite halakah to the Sadducean views known to us discloses how unfounded are the assertions of Weiss (*Dor*, IV, 85); Neubauer (*Aus der Petersburger Bibliothek*, 2); Fürst (*Geschichte d. Karäerthums*, I, 13 ff.); Harkavy (Grätz, *Geschichte* V<sup>4</sup>, 477 and elsewhere); Poznański (*REJ.*, XLIV (1902), 173) and others who follow Geiger, that the Karaites agree with the Sadducees in the differences between the latter and the Pharisees.

<sup>70</sup> See Harkavy, *l. c.*, 776; Poznański, *REJ.*, *l. c.*, 176-7; V. Aptowitz, *Die Rechtsbücher der nestorianischen Patriarchen u. ihre Quellen*, 8.

אֶלְצֻדֻקִיָּה mentioned by the above-named tenth century Karaites. As Schechter himself says: "The term Zakokites naturally suggests the Sadducees; but the present state of knowledge of the latter's doctrine and practices does not offer enough points of resemblance to justify the identification of them with our sect" (*Intr.*, XXI). However, if these fragments *do* contain Sadducean traditions and practices,<sup>71</sup> they afford no support of the Sadducean-Karaite theory, but rather disclose further proof that in seeking for the origin of Karaism and its halakah we must cut adrift from any theory that would link it with Sadduceeism.

One of the two main and specific accusations of this Sect against their antagonists is polygamy (p. 4, ll. 20 ff.) which *all* the Karaites allow if it does not interfere with the husband's duties to his first wife and is not לְצֻר.<sup>72</sup> See

<sup>71</sup> See Israel Lévi, *REJ.*, 1911, 162 ff.; K. Kohler, *American Journal of Theology*, 1911, 432; comp., however, G. F. Moore, *Harvard Theological Review*, 1911, 358, 270, and Poznański, *Jewish Review*, September 1911.

The suggestion of Bacher (*ZfB.*, 1911, 19) that these Zadokites represent a group of Sadducean priests who, not long before the destruction of the Temple, in consequence of the victory of the Pharisees, left Palestine, is based on the theory of Büchler-Chwolson that not until a decade before the national catastrophe did the Pharisees control the national life of the people—a theory which is still to be proved; comp. A. Epstein, *MGWJ.*, XL (1896), 139-140. Kohler (*l. c.*, 431) states that "The Fragments of a Zadokite Work" discovered by Schechter "strongly confirms the theory of Abraham Geiger as to the relationship of Samaritanism and Karaism to Sadduceeism" and that "Professor Schechter has made it highly probable, if not certain, that the Document brought to light by him formed the very source of Anan's system, which, as Kırkısani relates, was founded upon the books of Zadok" and: "We thus possess in this Document the connecting link between the ancient Sadducean and Samaritan lore and the doctrines of the Karaites in a far more direct form than Geiger and Harkavy could expect" (*l. c.*, 432-3). The following examination of the halakah contained in this Document will show how erroneous these assertions are.

<sup>72</sup> Comp. *Leḳaḥ Tōb* to Deut. 21, 5 referred to by Schechter, XVII, n. 16. Gittelsohn, *Civil-Gesetze der Karäer*, Berlin 1904, II, n. 9, is to be corrected accordingly.

Harkavy, ל"ענ, סה"מ, 105, 109, 127; Hadassi (Alph. 324 (119d); comp. also Alph. 321-2, 365 (135b)); Aaron b. Joseph (Mibḥar, Lev. 33b); Samuel al Magrabi (MS., 214b); Aaron b. Elias (גן עדן, 146d, 154b; כתר תורה, Lev. 49a); Elias Bashyazi (נשים, אדרת אליהו, ch. 5); Solomon Troki (אפריון, 46). A present day Karaite, Samuel b. Shemariah Pigit, Ḥazzan in Ekaterinoslav, writes: כאלו ... חכמינו ע"ה אסרו לקחת שתי נשים, הם לא אמרו זאת מעולם כי אין אצלנו חרם רבנו גרשון רק הם חייבו על פי הכתובים למלאות איש חובתו (אגרת נדחי שמואל) כנגד נשיו והיא שאר כסות ועונה (St. Petersburg 1894, I, 176); comp. also Schechter, *l. c.*, p. XIX, n. 22.

According to this Sect "Fish may be eaten only if while still alive they have been split open and drained of their blood" (p. 12, ll. 13-14; comp. p. LI, n. 23), not requiring that the fish be *caught* by an Israelite. Anan (*JQR.*, XIX, 143; comp. *ib.*, 138) and many other early Karaites<sup>78</sup> (Hadassi, Alph. 235 (89d); Jacob b. Reuben quoted in מירית כסף to Mibḥar; Num. 10b, lett. 55) held, in agreement with the Samaritans (Wreschner, 51), that only fish caught

Schechter (pp. XVII, XIX, XXXVI, n. 3) believes that this Sect prohibited divorce and regarded a second marriage during the life-time of the first husband or wife, even after divorce, as fornication (comp. *JQR.*, 1911, 138). This view is as foreign to the Karaite halakah as to Tradition; see above p. 341. This Sect decries also the Pharisaic regulation of the calendar. If the calendar of this Sect was a solar one (comp. Schechter, XVI, XX and Kohler, *l. c.*, 429), the Karaites differ in this important point from this Sect as much as the Rabbanites.

<sup>78</sup> It may be pointed out that a similar view is quoted in Midrash (Gen. r., 7, 2 and parallels) in the name of Jacob of נביריא who seems to have been suspected of some כינות (comp. Eccl. r. 7, 47; המגיד, vol XIV, 245). The later Karaites rejected this view. See כתר תורה, Num. 15b: אם את כל דגי הים יאסף: נאמרה אסיפה בדגים כפי רוב המנהג לא שהאסיפה [ב]מקום השחיטה שאם כן צריך להיות אסיפת ישראל מכשרת ולא אסיפת גוי; so also גן עדן, 101b; comp. also Samuel al-Magrabi, *l. c.* The requirement that the blood be drained from the fish before it is eaten suggests, as Schechter p. LI, n. 23, points out, that this Sect prohibited the eating of

by an Israelite may be eaten. Moreover, "splitting open the fish while still alive," which is required by this Sect, is *expressly forbidden* by most of the Karaites. See Samuel al Magrabi, ed. M. Lorge, *Die Speisegesetze der Karäer von Samuel el Margrebi*, Berlin 1907, 21; Hadassi, Alph. 234 (89d); comp. also *JQR.*, XIX, 145: ע' שחיטה, אדרת אליהו, ch. 23.

Schechter (pp. XVIII, XLIX, notes 16, 24, LX) pointed out several agreements between the Karaite halakah and that of this Sect in the details of sabbath-observance. Extreme sabbatarianism is, however, a general sectarian propensity. Moreover, the Karaites differ from this Sect in the following laws of the sabbath.

According to this Sect (p. 11, ll. 16-17) "if any person falls into a gathering of water or unto a place of . . . he shall not bring him up by a ladder or a cord or any instru-

the blood of fish. This is also the view of Daniel al-Kumši (Kirkisani, ed. Harkavy, 316). So also Hadassi, Alph. 234, end and Aaron b. Elias (ג'ן ערן, 93c; ב'תר תורה, Lev. 19a). Comp. Bacher, *MGWJ.*, 1874, 272. Many Karaites, however, oppose this view. See Mibḥar, Lev. 12a, and מ'ירת כסף, *ad loc.*, lett. 65; Samuel al Magrabi, *l. c.*, 16. Kohler's contention (*l. c.*, 427) that the Book of Jubilees agrees on this point with Tradition against this Sect is not proved; see Book of Jubilees, 6, 10; 7, 28.

The Karaites agree, however, with the law of this Sect (p. 12, ll. 14-15) that locusts are to be killed in water. See Hadassi, Alph. 235 (89d); Jacob b. Reuben (*ZfthB.*, IV, 73); Samuel al-Magrabi, *l. c.*, 9, 21; ג'ן ערן, 101c; ע'י, שחיטה, אדרת אליהו, ch. 24. Schechter (XXIV, LI, n. 20) believes that this Sect considered honey to be מ'בר מ'ן החי and therefore prohibited it. It is, however, more probable that מ'עגלי הדבורים (p. 12, l. 12) refers, as Schechter himself (*l. c.*) suggests, to the particles of the bees which are mixed up with the honey and is, perhaps, to read מ'רגלי הדבורים. See Asheri, on Aboda Zarah, 68b: תימא היאך אנו אוכלין הרבש והלא רגלי הובוב. מ'עורבין בו. The later Karaites allowed the use of honey (ג'ן ערן, 92d, 93a). It is, however, doubtful whether this was also the view of the earlier Karaites many of whom prohibited even eggs as מ'בר מ'ן החי; see Hadassi, Alph. 232 (89c) and Alph. 308 (114c).

ment." (See Schechter, XLIX, n. 39; I. Levi, *REJ.*, l. c. 198, n. 14; Moore, l. c., 365; Kohler, l. c., 425). This law is against the Karaite halakah as well as against Tradition. The Karaites agree<sup>14</sup> with Tradition (Shabbat 18, 3; Yoma 84 ff.; Mekilta on Exod. 31, 14 and parallels) that for the saving of a human life the sabbath is to be desecrated. See Hadassi, Alph. 148; 179; Mibḥar, Exod. 38a; גן עדן, 34a; אדרת אליהו, ע' שבת, ch. 21; אפריין, p. 9.

This Sect, like the *Book of Jubilees* (50, 12, comp. v. 9), prohibited<sup>15</sup> fasting on sabbath. Most of the Karaites, however, allow and even commend fasting on the sabbath. See Hadassi, Alph. 150 (56d); comp. Alph. 244 and 264. So also Samuel al Magrabi, ed. Weisz, *Traktat über den Sabbat bei den Karäern*, Pressburg 1907, 14; comp. also גן עדן, 36a; Elias Bashyazi in his מאגרת היצום and in אדרת אליהו, ע' שבת, ch. 11, but see אפריין, p. 8. It may also be pointed out that the two most important Karaite devia-

<sup>14</sup> Grätz (*Geschichte*, V<sup>4</sup>, 186) states that Anan prohibited medical treatment on the sabbath. I do not know his authority for this statement. See Hadassi, Alph. 301, letters צ, ק (112b) and Levi b. Jepheth quoted by Harkavy, ספר המצות לענן, 132. Anan relying on Exod. 15, 26 prohibited altogether the use of medicine and of physicians (Kirkisani, quoted by Harkavy in Grätz, V<sup>4</sup>, 487; comp. Hadassi, Alph. 207 (82a)). It is only in case of ספק פקוח נפש that some Karaites hold that it is not דוחה שבת. See Hadassi, Alph. 179a and Alph. 364 (135a) and Joseph b. Abraham quoted in גן עדן, 34, and in אדרת אליהו, ע' שבת, ch. 2; see, however, Maim., שבת ה', 2, 3.

Aaron b. Joseph (Mibḥar, Exod. 38a) quotes I Sam. 21, 7 as proof that פקוח נפש דוחה שבת. This verse is adduced also in Matthew 12, 4 and in Yelamdenu (Yalkuṭ, II, 30) in this connection.

<sup>15</sup> This seems to be the meaning of אל יתערב איש מרצונו בשבת (p. 11, ll. 4-5; comp. p. XLIX, n. 19; I. Levi, *REJ.*, l. c., 197; Bacher, *ZfHB.*, XV, 15; Kohler, l. c., 424.) reading יתערב for יתערב; comp., however, Moore, *Harvard Theological Review*, 1911, 246. The Falashas postpone even the Day of Atonement when it occurs on sabbath.

tions from Tradition in the laws of the sabbath, namely, the prohibition to have fire in the house on the sabbath and the prohibition of cohabitation on the sabbath-day, which Geiger (*Nachgel. Schriften*, III, 288 ff.) and Harkavy (Grätz, *Geschichte*, V<sup>4</sup>, 478) believe,<sup>16</sup> go back to Sadducean Tradition, are *not* shared by this Sect.

The law of this Sect that water in a rock not sufficient for immersion is contaminated, like water in a vessel, when touched by an unclean person (p. 10, ll. 13-14) is against the Karaite principle that water does not contract uncleanness. See Kırkısanı (quoted by Harkavy, Grätz, *Geschichte*, V<sup>4</sup>, 488) who states that this was the view of Anan. So also Hadassi, Alph. 235, 286, 295; Mibḥar, Lev. 28*d*; גן עדן, 98*d* and 105*c*; כתר תורה, Lev. 28*a*; אדרת אליהו, 72.<sup>17</sup>

<sup>16</sup> See also Fürst, *Geschichte d. Karäerthums*, I, 11. While the opinion that the *Sadducees* also prohibited cohabitation on sabbath may be justified on the hypothesis of Geiger that any divergence from traditional halakah which is common to the *early* Samaritans and the Karaites goes back to a pre-Pharisaic (Sadducean) tradition, since we find the early Samaritans holding this view (Frankel, *Einfluss*, 253, stands alone in his opinion that this prohibition was adopted by the Samaritans from the Karaites; comp. Wreschner, 18-19), there is *no* reason to assume that already the early Samaritans prohibited having light in the house on sabbath. The arguments adduced by the Samaritans Manugga (Wreschner, 16, 17) and Ibrahim b. Ja'kūb (who knew the Karaite view; comp. Geiger, *N. S.*, III. 289) for this prohibition which are *borrowed from the Karaites* (Wreschner, 18) tend to show that this prohibition was accepted by the later Samaritans from the Karaites. Nor is it probable that this prohibition resulted from the ancient interpretation of the concept מלאכה (Geiger, *l. c.*; comp. Poznański, *REJ.*, XLIV 174 ff. in connection with which see the claim of the tenth century Karaite Ibn Saquie, who, like Geiger, believed in the existence of a more ancient Halakah (*JQR.*, XIII, 664; הקדם, I, 1908, 125), as to the reading in Tosefta Shabbat 1, 23; מ'ין פוחקין מים לגינה; comp. *JQR.*, *l. c.*, 662; הקדם, *l. c.*, 120).

<sup>17</sup> See, however, the view of Joseph b. Abraham (quoted in Mibḥar, *l. c.*) that מים. תלושין contract uncleanness. The view of this Sect agrees

According to this Sect (p. 10, ll. 11-12) no man ritually unclean shall cleanse himself in the water of a vessel. As Schechter (XLVIII, n. 3) remarks, this law is directed against **מים שאובים**. The Karaites, however, not only allow **מים שאובים** (comp. *MGWJ.*, 1909, 469) but, as Kırkısani informs us (quoted by Harkavy, *l. c.*), it was the view of Anan that one who does *not* bathe in a vessel remains unclean.<sup>78</sup>

The two laws contained in p. 12, ll. 15-19 are, as Schechter (p. LI, n. 27) remarks, against the Traditional view that only **כלי** and **תליש** are capable of contracting and communicating Levitical uncleanness.<sup>79</sup> The Karaites agree with Tradition *against* this Sect. See Anan: **ודק קרא וכתב אשר יעשה מלאכה בהם לאורעד דכל מאנא דלא נמר מאניה** (ספ"מ לענן) למעבר ביה עיבירתא לא מיטמא (ed. Harkavy, p. 51;

partially with *Mikwaot* 1, 1 ff. (according to the interpretation of Maim. in his commentary *ad loc.* and **טומאת אוכלין**, 15, 1) that water less than **ארבעים סאה** (אשר אין בו די מרעיל) p. 10, ll. 12-13 may also mean less than **מ' סאה** contract uncleanness if **בכונה** even when **מחובר**.

Ps.-Jon's rendering of Lev. 11, 36: **וגובין בית כנישות מיינ נבעין** is against our halakah. It may also be pointed out that the Dositheans held, like this Sect, that water is **טומאה מקבל**; comp. Kirchheim, **כרמי שומרון**, 25.

<sup>78</sup> The Samaritans, according to p. Abodah Zarah 5, 4, agree with Tradition on **מים שאובים**; comp., however, ר"ש to *Mikwaot*, 8, 1.

<sup>79</sup> It must, however, be pointed out that the law of this Sect (p. 12, ll. 17-18): **וכל כלי מסמר או יתד בכותל אשר יהיו עם המת בבית וטמא בטומאת אחד כלי מעשה** (כטומאת ר.) agrees with the view of Hadassi, *Alph.* 290, 292, that in the case of Num. 19, 18 (**טומאת מת**) is contracted and communicated even when **מחובר**. This view is not shared by the other Karaites. See *Mibhar*, Num. 10b; **כתר תורה**, Num. 29b; **גן עדן**, 122c; **אדרת**, 122c; **תנור וכירים** (Lev. 11, 35; see Rashi and Nahm. *ad loc.*, Shabbat 125a; Maim., **כלים**, 15, 6 and commentary to **כלים**, 5, 1) it is the opinion of most of the Karaites that it is not **מקבל טומאה** when **מחובר**. See **כתר תורה**, *ad loc.* (28a); **גן עדן**, 106a; but see Hadassi, *Alph.* 292 and *Mibhar*, Lev. 18a.

comp. *ib.*, p. 58 and 133; Hadassi, Alph. 286; Mibhar, Lev. 17a, 20a; כתר תורה, Lev. 26b, 28b; גן עדן, 103b, ff.; אדרת אליהו, 71b; אפריון, p. 21).

## THE INFLUENCE OF THE WORKS OF PHILO UPON THE KARAITE HALAKAH

### PENAL LAWS

1. In the laws of homicide the Karaites widely deviate from Tradition. According to Tradition, murder is punishable only when felonious intent to kill has been proved (Sanhedrin 78b ff.).<sup>80</sup> Beside intent, antecedent warning immediately before the commission of the crime and its acknowledgment by the offender (התראה) are required (Mekilta on Ex. 21, 12; Sifre on Num. 15, 33 and Deut. 22, 24; Sanhedrin 80b; Makkot 6b and parallels). The Karaites do not require forewarning in any crime<sup>81</sup> and consider murder punishable even in the absence of intent. See המשאת בנימין, 2a: המכה אדם ומת מן אותה המכה יומת. ואפילו אין מתכוין להרגו שנא' מכה איש ומת. So also Samuel al-Magrabi (Gitelsohn, 22). Intent to kill is required by the Karaites only when the missile by which the killing has been effected was not likely to cause death. See גן עדן, 176d: והרוצחים חלקם הכתוב לשלש מעלות יש רוצח שרצח את הנפש .... אך הכתוב הפליג בענין זה הרוצח שאם כון להכותו לבד והכהו בדבר אשר לא יתכן למות בו והוא מת זה יקרא רוצח בשגגה . אך אם הכהו בדבר שימות בו ומת זה נמנה בחוקת רוצח מזיר שטעם מזיר שלא בדק אם

<sup>80</sup> According to R. Simeon (Sanhedrin 79a) and Rabbi (Mekilta, Mishpatim, 8) murder is not punishable even in case of miscarried felonious intent, i. e. when a man intending to kill a person killed another instead.

<sup>81</sup> Mibhar, Exod. 42a: וכן אמרו אינו חייב עד שיתרה בו וכן כל חייבי לאוין; והוא התראה יתירה מן לאו שבתורה; so also גן עדן, 177c. This seems also the opinion of Philo; see *Werke Philos*, II (Breslau 1910), 263, n. 2.



כתר ימות בו או לא ימות. (Comp. also Mibḥar, Exod. 32*b* and תורה, Numb. 49*b* and Samuel al Magrabi (Gitelsohn, 14) in which case the offender would, according to Tradition, not be punishable at all (Mekilta to Ex. 21, 18; Sifre to Num. 35, 17 (ed. Friedmann 61*b*); Sanhedrin 79*a*; Maimonides, רוצח, 3, 1-3.).<sup>82</sup> Tradition punishes murder only when the murderer has laid his hand on the victim and the death has resulted from such *direct* assault; handing another poison, unless actually forcing it in his mouth, or leading him to a place where in a short while a force of nature or a beast will kill him, is thus not punished by death (Sifre to Num. 35, 17; Sanhedrin 76*b* ff.; Maim., רוצח, 2, 2 ff.). The Karaites do not require the death to be the direct result of the action of the murderer. The Karaites accept the view of R. Judah b. Bathyra (Sanhedrin 78*a*) in case of murder committed by several people simultaneously. See והנהרג ע"י אלה אנשים ויותר כלם חייבים מיתה, 2*a*: משאת בנימין. See also Hadassi, Alph. 152 and Alph. 166; גן עדן, 177*c*; and Samuel al Magrabi, MS., 84*a*: ואין הפרש אם ההורג לנפש ... ואם הוא אחד או רבים בחיוב זה ... הכל מחויבים בהריגה ... and the opinion of Beth Shammai (Kiddushin 43*a*) concerning murder committed through an agent. See גן עדן, 177*b*: וואחר אם יעשהו האדם בעצמו או על ידי צווי; comp. Hadassi,

<sup>82</sup> Nor do the Karaites, in case of the defendant's confession of any crime, require witnesses to establish guilt. See Benjamin Nahawendi, ולפני בית דין הודאת פיו כשני נאמנים: 1*c*: משאת בנימין (Alph. 357*t*): תודת חוטא אשר יודה הוא על עווננו הוא כשני עדים; see also Alph. 370; so also Samuel al-Magrabi (MS., 105*b*): דע כי אם ידבר בעל הריב: על נפשו ויאמר אני עשיתי כן וכן לא יצטרך לעדים וזה בהפך מדעת המחליפים; comp. also Mibḥar, Num. 5*a*; גן עדן, 194*d*; אדרת אליהו, 98*a*. The talmudic principle is אין אדם משים עצמו רשע, no man can incriminate himself, confessing of guilt not being admitted as evidence (Sanhedrin 9*b* and parallels; Maimonides, סנהדרין, 18, 6; but comp. Weiss, I, 23 ff.).

Alph. 269 ff.; comp. also Weiss, I, 150. They also consider accessories, accomplices, and counselors to murder punishable equally with the principal. See Hadassi, Alph. 274: וכן המלשין לחברו בין בסתר בין בגלוי להרגו ונהרג הוא הוא . . . . כתר . See הרוצח וכלם רשעים הם ויהרגו בדרישה בבית דינך . . . . וכבר בארנו בספר מצות אופני הדרכים : Exod. 64b-65a: תורה, שמצדם יקרא האדם רוצח ויתחייב בין שיהרגנו בעצמו בין על ידי זולתו ; בין ע"י סם המות בין בעדות שקר בין שיסבב מיתתו או שירצה בהריגתו ... so also גן עדן 177b. See also Samuel al Magrabi (MS. 84b) : ההריגה תפול על אופנים ממנו הכאה ביד .... ומהם כי ידחה האדם : את רעהו ויפול ממקום גבה או לשלג או למים או לאש ... ומהם כי ישקה האחר את חברו סם או יהיה בו חולי וירפאהו בזולת העקרים הראוים לאותו החולי בצדיה ... ומהם כי ירגל האדם ברעהו ויהיה סבה להריגתו... ואין הפרש בכל אשר דברנוהו אם האדם יעשה אותו בנפשו או אומר לזולתו לעשות כי האומר והעושה לא ביניהם הפרש במשפטי התורה ... So also Mibḥar, Exod. 38a.

These Karaite laws approach the view of Philo according to whom intent to kill even when not carried out is punished by death (I, 314, Mangey, comp. B. Ritter, *Philo und die Halacha*, Leipzig 1879, 23 ff. and *Werke Philos*, II, 209, note 3).<sup>58</sup>

<sup>58</sup> Josephus (*Ant.* XII, 9, 1) agrees with Tradition that only *action* is punishable. Philo states in this connection (II, 315) that those who with murderous intent prepare poison or any other deadening substance are to be killed *instantly* (Josephus, *Ant.* IV, 8, 34, considers even the keeping of poison punishable by death in which, as Weyl, p. 66 ff., has shown, he followed the Roman law (*Lex Cornelia de sicariis*)). As suggested by Ritter (p. 28), Philo based this law on Exod. 22, 17. The Septuagint translates מוכשפה by *φαρμακονς* which has also the meaning of "poisoners." Ritter fails, however, to indicate the source of Philo's assertion that the Law commands that the poisoner is to be executed *immediately*. The peculiar expression לא תחיה instead of the usual מות תמות (comp. רשב"ם and Nahm., *ad loc.*) must have been taken by Philo to mean "do not suffer him to live even a moment." This interpretation of לא תחיה is also found among the Karaites. Samuel al-Magrabi (MS., 141b) says that

2. Ransom for death caused by the unguarded property of a man or through his instrumentality is required, according to Tradition, only in the case of the goring ox (Exod. 21, 29-31), the provision not applying to death caused by any other property or by any cause of danger created by him (Baba ḥamma 5, 6; b. *ib.*, 53b; Maimonides, נוקי ממון, 12, 16). The Karaites interpret the law of ransom (v. 30) to apply to all cases where a person meets death through the negligence of the owner of the property or the creator of the cause of death. Thus, whether it be a pit (Ex. 21, 33-35), or a fire kindled on one's premises that spread beyond (*ib.*, 22, 5), or failure of the owner of a house to build a battlement for his roof (Deut. 22, 8)—and a person was killed as a result of such negligence—in all these cases the Karaites hold that the owner of the property or the maker of the fire or pit is to pay ransom, according to Exod. 21, 30. As Hadassi says: תורת השונג ששנג ולא שמר שורו : אשר הועד ולא כסה לבורו ואשר לא עשה מעקה<sup>84</sup> (Alph., 274). See *ib.*, Alph. 270 and 370. See also משאת בנימין, 2c: המטמין פה ומצודה וחבל הנחנק בהם א' מן בני אדם ויענש בדמיו וכה"א כי נמצאו בעמי רשעים וגו' . ואם מבקשים כופר נותן כבר וינצל ואולם הנזק הבא מצד הגרמותיו בין בנפש : 180d, גן עדן See also

though the Law reprieves the condemned pregnant woman, in case of מבשפה ואמר. לא : לא תחיה the execution is not to be postponed since the Law says תחיה ולא אמר מות תמות הודיענו בזה המאמר כי לא יכשר לנו לאחר מיתתה מעת לעת ואם היא הרה מעוברת כי היא כמו החרם.

<sup>84</sup> Comp., however, Mibḥar., Exod. 43b. The Karaites agree also with Philo (II, 324), against Mekilta *ad loc.*, in the interpretation of והמת יהיה לו (v. 34) as referring to the מזויק; Philo (323) and Hadassi, Alph. 273, interpret also והמת יהיה לו in v. 36 as למזויק. So also Benjamin Nahawendi, משאת בנימין, 2c, l. 1, but see Mibḥar, *ad loc.*; כתר תורה Lev. 74a; comp. also גן עדן, 181b.

בין במומים כן יעשה לו ואם לאו יתן כופר שעל רציחתו הזכיר הכתוב ולא תקחו כופר לנפש רוצח ולא על רציחת הגרמותיו. והנה על רציחת שורו אמר השור יסקל וגם בעליו יומת. ואמר אם כופר יושת עליו ונתן פדיון נפשו ככל אשר יושת עליו. והתורה הזכירה ארבע אבות נזיקין והוא הדין לכלם שאם נהרג נפש באחד מהם יתן כופר. Comp. *ib.*, 178*d*, 181*c*, 182*b* and Samuel al Magrabi, Gitelsohn, 39-40. Further fol. 133*a* (not published) he says: ואם היו שם אנשים או נפשות והשיגה אותם האש ונשרפו ומתו יתחייב בכופר נפשם.

A view similar to this Karaite anti-traditional law—that also other cases of criminal negligence are punishable—is held by Philo.

Expounding the law of Ex. 21, 33 (II, 324), Philo says that if a man fall into the pit and die the court shall decide what punishment the digger is to suffer or what fine he is to pay (οτι χρη παθειν η αποτισαι). He also says about the law of Deut. 22, 8, that those who fail to make a battlement to their roof commit a crime equal to that of one who digs a pit, and declares: κολαζεσθωσαν γονν εν ισω τοις αχανη τα στομια των ορυγματων καταλειπουσιν; comp. Ritter, 52 and notes.

Philo and the Karaites agree also in the interpretation of v. 29*b* וגם בעליו יומת. Tradition interprets it to mean that the owner, if he does not redeem himself, shall suffer death at the hand of God<sup>85</sup> מיתה בירי שמים (Mekilta, Mishpatim, X;

<sup>85</sup> Frankel (*Einfluss*, 93) believes that the translation of the Septuagint indicates the traditional interpretation, against which see Ritter, 48, n. 2 and 124 ff. and H. Weyl, *Die Jüdischen Strafgesetze bei Flavius Josephus*, Berlin 1900, 153 ff. The view of Geiger (*Urschrift*, 448 ff.) that the ancient halakah interpreted וגם בעליו יומת as מיתה בירי אדם was already shown by Pineles (דרכה של תורה, 193-6) and Weyl (*l. c.*, 144-153) to be unfounded; comp. also Poznański, *Abraham Geiger, Leben u. Lebenswerk*, 378, n. 1.

Sanhedrin 15*b*; comp. Ps.-Jon. to v. 29). The Karaites uphold the literal interpretation of וגם בעליו יומת (i. e. אדם בירי אדם) and take ואם כפר יושט עליו (v. 30*a*) to mean that the nearest kinsmen (נואלי הדם) of the killed are to decide whether to execute him or to take ransom. See Benjamin Nahawendi, ואם הוא נודע [השור] ובעליו מועד וממית אדם הוא : 2*c*, משאת בנימין יסקל ויומת גם בעליו וכה"א השור יסקל וגם בעליו יומת . ואם נואלי הדם רוצים ליקח ממנו כפר יתן וינצל בעבור כי הריגה זו על ידי הבהמה לפיכך הרשות בידם אם רוצים הורגים ואם רוצים לוקחים כפר : שכה"א . See also Hadassi (Alph. 270, 370); 177*d*, and בחר תורה , *ad loc.* (73*b*); Samuel al Magrabi (Gitelsohn, 35-36).

Philo holds the same view, and in his exposition of this law (II, 323) says that the owner of the goring ox is guilty of the man's death. He shall be put to death or pay ransom. The court shall decide his punishment. The Karaites thus agree with Philo and differ only as to the question with whom rests the option of death or ransom; while according to Philo (so also Mekilta, *ad loc.*) the court is to decide, the Karaites hold that it rests with the נואלי הדם.

3. Tradition interprets the law of Ex. 21, 24-26 and Lev. 24, 19-21 to mean money indemnity (Mekilta *ad loc.*, (Mishpatim 8); Sifra on Emor, 24, 19; Baba kamma 8, 1; Ketubbot 35*a* and parallels; comp. Maimonides, חובל ומיץ , 1, 1 ff.).

Philo takes these verses literally and in several places vigorously advocates the practice of *lex talionis*. See Ritter, *Philo und die Halacha*, p. 18 ff. The *lex talionis* is accepted in all its severity also by nearly all the Karaites. Benjamin Nahawendi interprets עין תחת עין literally. See Benjamin Nahawendi, משאת בנימין , 2*d*; העשה כל מכה ומום בחבירו ;

נפרע שנאמר כאשר עשה בן יעשה לו. So also Ben Zuta, a Karaité contemporary of Saadia Gaon (Ibn Ezra on Exod. 21, 24); Jepheth b. Ali (*MGWJ.*, XLI, 1897, 205); Hadassi (Alph. 275 (104c); 370 (146b); 373 (149c); comp. also Alph. 170); Aaron b. Joseph (Mibḥar, Exod. 42a); Aaron b. Elias (גן עדן, 179a ff.; כתר תורה, Exod. 71b ff.); Samuel al Magrabi (Gitelsohn, *l. c.*, 28-9); Abraham b. Josiah (אמונה, 24b); Solomon Troki (אפריין, 39).<sup>86</sup>

<sup>86</sup> See also Rapoport, בכורי העתים, 1831, p. 34. L. Löw, *Gesammelte Schriften*, I, 287 is to be corrected accordingly. Harkavy, ס"חמ לענן, 198, believes that Anan also upheld *lex talionis*; comp. also Schechter, *Jewish Sectaries*, II, 7, ll. 5-7. The Samaritans also interpret עין תחת עין literally (Klumel, *Mischpatim, ein samaritanisch-arabischer Commentar*, XX; *JQR.*, 1911, 210 is to be corrected accordingly). Some Karaites restrict the application of *lex talionis* to intentional permanent injury; still others leave it to the discretion of the court to pronounce sentence of equal punishment or indemnity; comp. Mibḥar, Exod. 53a; כתר תורה, Exod. 71b ff. According to the Scholion of Megillat Ta'anit ch. 4 (Neubauer, *Mediaeval Jewish Chronicles*, II, 8; comp. Grätz, III<sup>4</sup>, 693) the *Boethusians* extended their literalism to *lex talionis*. Geiger at one time (*Urschrift*, 148, but see *id.*, *Sadducäer u. Phariseer*, 22; *Nachg. Schriften*, V, Heb., 162), Rapoport (דברי שלום ואמת, 15), and Ritter (133-4) deny this report any historical basis (comp. Jost, *Geschichte d. Judenthums*, I, Leipzig 1885, 221; L. Löw, *l. c.*, 286; Büchler, *MGWJ.*, I, (1906), 679, n. and the literature adduced by Ritter, *l. c.*). Such an important difference would not have been left unnoticed in the talmudic literature. It is also improbable that Josephus, who was an avowed Pharisee (*Vita*, II, end) and who in all the differences between the Sadducees and the Pharisees, as far as his opinion is known to us, sides with the Pharisees (except in the interpretation of באש תשרף in Lev. 21, 9; see Olitzki, *Flavius Josephus und die Halacha*, Berlin 1885, 42, 44, 54 and Ritter, 26), would have accepted the literal interpretation of עין תחת עין (*Ant.* IV, 8, 35) if it were anti-Pharisaic.

Geiger (*Nachg. Schriften*, V, Heb. 162) claims that the ancient halakah also interpreted עין תחת עין literally, as R. Eliezer held this view (Baba ḥamma 84a; see the version of R. Eliezer's opinion in Mibḥar, Exod. 42a, which he seems to have taken from Mekilta, Mishpatim, 8, reading R. Eliezer for ר' יצחק; comp. Geiger, *l. c.*, and L. Löw, *l. c.*, 287, n. 2). See I. Halevy, *דורות הראשונים*, vol. I, c, 425 ff. for elucidation of the traditional view and that of R. Eliezer; comp. S. Munk, *Guide des Égarés*, 371, n. 1. Philo (II,

Philo (II, 323, end) states that the owner of an animal that killed a slave is to pay the *full value* of the slave. Ritter (49) considers this view of Philo to be against Exod. 21, 32: שלשים שקלים יתן לאדניו. Many Karaite authorities agree with Philo and hold that v. 32 establishes the minimum fine and that if the value of the slave be more than שלשים שקל, the owner is to be paid the full value of the slave. Other Karaites hold that by שלשים שקל the law indicates the value of the average slave and that in all cases the owner of the animal is to pay the full value of the slave. See גן עדן, 181a: ואם המית עבד דן הכתוב לתת: 181a: ובעלי הקבלה אמרו שעליו יש להקל ולהחמיר אחד עבד שבפחותים ואחד עבד שבחשובים ערך אחד גדולים וקטנים עבד ושפחה אע"פ שיש מחכמי הקראים חולקים בזה: יש מהם אומרים שזה ערך הפחות אבל יש להוסיף עליו. ומהם אומרים יש להוסיף ולגרוע. So also כתר תורה, Exod. 73b.

The Karaites agree with Philo also in the interpretation of Exod. 21, 19 משענתו על בחוץ על מההלך. Tradition (Mekilta *ad loc.* (Mishpatim, 6); Onkelos and Ketubbot 4, 4 (28c; but see Ps.-Jon. *ad loc.*), taking משענתו figuratively, interprets it to mean that the offender is not liable for death consequent on a blow, if in the interval the injured party has so far recovered that he is able to walk about "on his own strength," i. e. without others' assistance. Philo (II, 317; Ritter, 32, note 3) takes משענתו literally, namely, that even when the injured party required the support of a staff or of a man the offender is

313; Ritter, 22) holds (against Mishnah Sanhedrin 9, 1; Mekilta on Exod. 21, 12) that the murderer is to be killed in the same manner in which he committed the crime (so also Book of Jubilees 4, 32). This is also the view of many Karaites. See S. Gitelsohn, *Civil-Gesetze der Karäer von Samuel al-Magrebi*, 14, ll. 13-15; see, however, גן עדן, 177c. The opinion of Büchler (*MGWJ.*, L, (1906), 679 n., 692, 706) that this was also the view of the Sadducees is not supported by any proof.

to be acquitted. The Karaites interpret על משענתו, like Philo, literally; see כתר תורה, Exod., 71a: ... ובעלי הקבלה על משענתו. אמרו במשענת עצמו ואינו נכון, גן עדן, 180b; Samuel al Magrabi (Gitelsohn, 23).

The Karaites interpret also Deut. 25, 12 וקצות את כפה against Tradition (Sifre *ad loc.*; comp. Midrash Tannaim. ed. Hoffmann, 168 ff.) literally; see Mibḥar *ad loc.* (22b); כתר תורה *ad loc.*; Samuel Al Magrabi, (Gitelsohn, 29). So also Philo (II, 328): Εστω δε η δικη χειρος αποκοπη της αφαιμενης ὧν οὐ θεμις.

4. Philo deviates in his exposition of Exod. 21, 22 ff. from Tradition which refers אסון in verses 22-23 to the woman and holds the man guilty of murder if he killed the mother, but not punishable for the deadly effect of the blow on the unborn child, regarding the foetus only as part or limb of the mother (*pars viscerum matris*) and without an independent existence (Mekilta *ad loc.*; Baba ḥamma 48b ff.; see also Ohalot 7, 6 and Ps.-Jon. to v. 22). Philo (II, 317 comp. 319, beg.) takes this law to refer to the embryo and interprets these verses: If the foetus miscarried by the blow was not formed at the time of the blow the offender is not liable for murder (verse 22), but if the embryo has assumed a distinct shape and is completed the offender shall die for the death of the child (verse 23).<sup>87</sup> Philo, though considering the unborn child to be a part of the mother (II, 319), holds that the law of Lev. 22, 28

<sup>87</sup> Philo follows the Septuagint in the interpretation of these verses; see Ritter, 35. Josephus (*Ant.*, IV, 8, 33) agrees with Tradition and refers אסון to the mother only; comp. Geiger, *Urschrift*, 436-7. Yet he holds, like the Karaites (Hadassi, Alph. 270 (103b)), causing abortion to be murder. See *C. Ap.*, II, 24; comp. M. Zipser, *Des Flavius Josephus Werk... gegen Apion*, 164. Some Karaites follow Tradition in the interpretation of אסון. See Benjamin Nahawendi, משאת בנימין, 2d; כתר תורה, Exod. 71b, below.



includes the prohibition of sacrificing a pregnant animal, a law unknown to Tradition (II, 398; comp. Frankel, *Ueber palästinische u. alexandrinische Schriftforschung*, 32, n. 6; Ritter, 109 and notes). Philo (*l. c.*; comp. Ritter, *l. c.*, n. 3) seems also to believe, against Tradition (Arakin 7a; comp. Ps.-Jan. to Deut. 22, 22), that the law reprieves a pregnant woman condemned to death. These anti-traditional views of Philo are found also among the Karaites. The Karaites, like Philo, consider the killing of an embryo murder punishable by death (Hadassi, Alph. 238<sup>פ</sup>, 270<sup>ב</sup>, 275<sup>י</sup>; see also references given below) and interpret אמון in verses 22, 23 to refer to the embryo or to the mother and the embryo. See Kırkısanı (ed. Poznański) in *Gedenkbuch zur Erinnerung an David Kaufmann*, Breslau 1900, 186; Hadassi, Alph. 238; 270; Mibḥar, Exod. 42b; כתר תורה, Exod. 71b ff.; גן עדן, 177d; 179c-d; Samuel al Magrabi, ed. Gitelsohn, 27 ff. They also consider the killing of a pregnant animal violation of Lev. 22, 28 and go even further than Philo in prohibiting the שליל a foetus found in a killed animal, for food. See Kırkısanı, ed. Harkavy, 291; and ed. Poznański, *l. c.*, 184 ff.; Sahl b. Maṣṣiah (Pinsker, II, 28; comp. *ib.*, 30, 83); Salmon b. Jeruḥam (Poz., *l. c.* 186-7); Hadassi, Alph. 238-240; 308; 360; 364 (134d); Mibḥar, Lev. 15b; 39a; כתר תורה, Lev. 24a; 62b; גן עדן, 83d. ff.; Samuel al Magrabi, ed. Lorge, 10-11; אדרת אליהו, 64b ff.; אפריון, 23; לבוש מלכות, 47; comp. also Ibn Ezra, Mibḥar, and כתר תורה on Gen. 25, 22 and Lekah Tob on Lev. 11, 13 and 12, 8.<sup>88</sup> Many Karaites

<sup>88</sup> See also Frankel, *MGWJ.*, VIII, 400. The Samaritans also apply the law of Lev. 22, 28 to שליל; see Geiger, *Nachg. Schriften*, III, 263-4; 302; V, Heb., 114; Wreschner, *Intr.*, XXVII. Geiger's view (*Nachg. Schr.*, V, Heb., 112 ff.; comp. also Büchler, *MGWJ.*, I, (1906), 674, note) that this Samaritan-Karaite opinion is based upon the principle of : עובר לאו ירך : אמנו . a view which, as Geiger (*l. c.*) believes, was held also by the ancient

prohibit also the execution of a pregnant woman. See Mibḥar on Deut. 22, 22 and טירת כסף *ad loc.*<sup>99</sup> Samuel al Magrabi (MS. 86a) states: ואם יאמר אומר אם היא מעוברת היבשר כי תהרג והיא מעוברת אבל יאחרוהו לאחר שתלד ואחר לידתה תהרג ואם לא כן נהיה הורגים שתי נפשות והמשפט אל נפש אחת בהריגה.

5. Tradition interprets: ונקב שם ה' מות יומת (Lev. 24, 16) to mean the cursing of the Divine Name (Sanhedrin 7, 5; Sifra *ad loc.*; comp. Ps-Jon. *ad loc.*: ברם מאן דמפרש: (ומחרף)<sup>100</sup>; so also the Septuagint (comp. Frankel, *Einfluss*, 132) and Josephus (*Ant.* IV, 8, 6). Philo (*Vita Mosis*, II, § 206 ff.) refers this law to any disrespectful mention of the name of God at an inappropriate occasion or place. To this untraditional interpretation of ונקב by Philo, goes back the view of Philo (Tischendorf, *Philonea*, 79; comp. Frankel, *Eidesleistung d. Juden*, Dresden 1840, 21; Ritter, 45-7) that the law punishes a false oath with death. As Philo (*l. c.*, 80) argues, a false oath involves the dishonor of the Divine Name therein employed (comp. Lev. 19, 12)

halakah, is erroneous. The question of עובר ירך אמו is applied in the Talmud to animals and slaves but not to free persons. See also against this contention of Geiger Pineles, *דרכה של תורה*, 190 ff.; L. Löw, *Ges. Schr.* III, 401; Gronemann, 122, note. It must also be pointed out that most of the Karaites mentioned above do not distinguish in the interpretation of אִמּוֹן between a finished and an unfinished embryo.

<sup>99</sup> Kīrkisani agrees with Tradition that the execution is not to be postponed (ed. Poznański, *Gedenkbuch zur Erinnerung an D. Kaufmann*, 185). Samuel al-Magrabi (ed. Gitelson, 38) states that the Law reprieves even a pregnant animal condemned to death! See above, note 83.

<sup>100</sup> For Onkelos *ad loc.*: ודי מפרש שמא see Geiger, *Urschrift*, 274. Chwolson, *Das letzte Passamahl Christi*, 119, overlooked the view of R. Meir (Sanhedrin 56a) that מקלל בכנוי is also punished with death. (M. Duschack, *Josephus Flavius u. d. Tradition*, 23 is to be corrected accordingly.) See, however, the opinion of R. Levi כהנא ed. Friedmann, 184a: כל מי שהוא מפרש שמו של הקב"ה חייב מיתה שנא' ונקב שם ...

and he applies to it the law of Lev. 24, 16, according to his interpretation of this verse. Most of early Karaites agree with Philo in the interpretation of ונקב שם ה' (v. 16). See Anan (ed. Harkavy, 13); ... ואקדים ליה כי יקלל לאדער דעל מאן; <sup>91</sup> The Karaites, like Philo, also set the punishment of death for false oath.<sup>92</sup> See Hadassi, Alph. 346, 347; Mibhar, Exod. 37a; כתר תורה, Exod. 62b; comp. *ib.*, Deut. 24b; Samuel al Magrabi (MS., 67a); שבועות, אדרת אליהו, ch. 6. They follow also the reason given by Philo. As a false oath involves the dishonor of the name of God the penalty therefor is death in accordance with Lev. 24, 16.<sup>93</sup>

<sup>91</sup> Harkavy's note to it (*ib.*, 198, s. v. דברי) is unintelligible. The later Karaites abandoned this interpretation of ונקב; comp. Mibhar, Lev. 44b. For the Samaritan interpretation of ונקב see Grünbaum, ZDMG., XVI (1862), 401 ff.

<sup>92</sup> According to Tradition (Tosefta Makkot 4, 5; b. Shabuot 20a) the penalty of a false oath is מלקות; comp., however, Nahm. on Lev. 27, 29 and the Yelamdenu quoted there. See Schechter, *Jewish Sectaries*, I, p. 16, l. 8 and notes, that according to the sect which Schechter designates as Zadokite (see above) "one is to keep a vow pledging him to a particular commandment *even at the risk of death*." The view of Kohler (*American Journal of Theology*, 1911, 417), that according to that sect the penalty of any false oath is death is not proved. The Zadokite sect (*l. c.*, p. 15, ll. 1-3) agrees also with Philo (*l. c.*; comp. Frankel, *Eidesleistung*, 19-20) that oaths are not to be taken by God's name. See Schechter, *l. c.*, LIV, as to the Samaritan manner of oath, against which see Kohler, *l. c.*; but see L. Löw, *Ges. Schr.*, I, 193 ff.; comp. also Grünbaum, *l. c.*, 404.

<sup>93</sup> See Afendopolo's appendix אדרת אליהו Odessa 1870, 209cd: ורוב החכמים וגדוליהם פסקו ודנו מיתה למי שעבר על שבועתו או שקר בה וחללה .... ואמר הרב רבנו לוי ע"ה כי המפר השבועה חייב מות ... ואמר ועם זה כי הראיה יוציא המשפט כי מי יחלל קדש משפטו הוא המות שנאמר ואוכליו עונו ישא כי את קדש ה' חלל ונכרתה ומקל וחומר מי חלל שם ה' וכן דעת הרב רבנו יהודה האב"ל ע"ה וחכמים אחרים גדולים עמחם כרבנו ישועה ויפת הלוי ע"ה והחכם האלהי הרב רבנו אהרן הראשון עמחם ... In Lev. 19, 8 quoted by Levi b. Jepheth and Samuel al-Magrabi (*l. c.*) as proof that the penalty of the dishonor of the name of God is death only כרת punishment is mentioned. The

Based on this Philonian-Karaite interpretation of Lev. 24, 16 is the view of the early Karaites that every antinomian utterance or action is punished by death. See Anan (א"ה, l. c.): ומאן דאמא מימר מצות לאו מידי אינון או : מיחייב קטלא ורנמין ליה כל אוריתא לאו מידי היא או דאמא מי יי ; טיב המגדף הוא המפר מצות ; עשה מעשותו : ביר רמה בזון הפיר מצותו ודנו בו רגימה בנקמתו comp. also Alph. 372<sup>ה</sup>, 373<sup>ה</sup>, so also Samuel al Magrabi (MS., 108b): ודע כי נחלפו החכמים במצות אשר לא נזכר להם : משפט בנקימה : מהם מי אמר כי כולם להם משפט מות וכי האדם אם ימרה אשר האמירו ית' בהם בצדיה יחויב מיתה והביא ראיה על זה ממאמרו כי דבר ה' בזה ואת מצותו הפך ואמר אחר כי זה המאמר בראיה המביאים אותה כי היא נאמרה על מי אשר כחש במצות התורה או מי יאמר כי המצוה הזאת איננה חוב או יאמר מנין יחויב זה המאמר <sup>64</sup>That this Karaite על דרך הבזיון כי אמר עליו את ה' הוא מגדף

early Karaites, however, took כרת to mean death by court, מיתה בידי אדם, against the traditional interpretation of the concept כרת as heavenly visitation (comp. Sifra on Lev. 23, 29; Sifre on Num. 19, 13; Moed kaṭan 28a; p. Bikkurim 2, 1; Maim., תשובה, 8, 1; Ibn Ezra on Gen. 17, 14; Naḥm. on Lev. 18, 29 and Abrabanel on Num. 15, 30). See Hadassi, Alph. 266: כי ... כל בעלי כרת ביד שופטיהם חייבים במשפט ה' אשר צוה בתורתך : מסורים ביד כהניהם מלכיהם שופטיהם ושופטיהם : ידי עדיהם תהיה כם בראשונה ... Death in punishment is by stoning (*ib.*, Alph. 267). See also Ibn Ezra on Lev. 20, 20 and Harkavy, ספר המצות לענן, 141, n. 14, and Mibḥar, Lev. 37a, letters 63, 69. S. Munk, *Palestine* (German ed. by M. Levy, II, 438) is to be corrected accordingly. The latter Karaites agree with Tradition; see Mibḥar, Lev. 34b; כרת תורה, Gen. 47b; Lev. 56b; גן עדן, 125d; אפריון, 7.

<sup>64</sup> Every antinomian action or utterance involves the dishonor of God's name which is, according to the Karaites, punished by death. See Hadassi, Alph. 373 (149c): ... ואם חלול שם ה' ותורתו על האיש ההוא מיתה ככתוב : כי את דבר ה' בזה ואת מצותו הפך וגו' . See also Book of Jubilees 30, 8-7. According to some Karaites failure to pray is also punished by death (in accordance with II Chron. 15, 13). So Samuel al-Magrabi (MS., 57a): והעובד את התפילה ולא יעשנה מהבוגדים ויעשה בצדיה וזדון ועל דרך הבזיון הוא חייב מיתה, ויש מהחכמים ז"ל שאמר כי העובד אותה על כל פנים חייב מיתה.

view is not due to their fondness for exaggeration but is based on the above-mentioned Philonian interpretation of Lev. 24, 16 and Num. 15, 30 (for Num. 15, 30, see Philo, II, 252 and 404) is evident from the fact that a similar view is held by Maimonides who, in disagreement with the talmudic interpretation (Sifre, *ad loc.*; Horayot 8a; Keritot 7b; comp. Rashi, Rashbam, and Nahm., *ad loc.*; comp. also Mibhar, Num. 15a; כתר תורה Num. 22b), refers Num. 15, 30 to all *antinomian* actions. See מורה נבוכים, III, 41 (Eng. translation by M. Friedlander, London, 1904, 348-9): "If a person sins presumptuously so that in sinning he shows impudence and seeks publicity; if he does what is prohibited by the Law, not only because of his evil inclination but in order to oppose and resist the Law, he 'reproacheth the Lord' (Num. 15, 30) and must undoubtedly be put to death. ... Even if an Israelite eats meat (boiled) in milk or wears garments of wool and linen, or rounds off the corners of his head, in spite against the Law, in order to show clearly that he does not believe in its truth, *I apply to him the words 'he reproacheth the Lord'* and (I am of the opinion) that he must suffer death as an unbeliever. ... According to my opinion, all the members of an Israelitish community which has insolently and presumptuously transgressed *any of the Divine precepts* must be put to death."<sup>95</sup>

6. According to Tradition, cursing parents is punished by death (Ex. 21, 17; Lev. 20, 9) only when the Divine

The Karaites, relying on Lev. 4, 2: מִכָּל מִצְוֹת..., hold (against Tradition; see Sifra *ad loc.*) that a sin-offering is to be brought for the involuntary transgression of *any* law. See Pinsker II, 73 (the meaning of this passage escaped Poznański, *Karaite Literary Opponents of Saadia Gaon*, 66); Mibhar, Lev., 6b; כתר תורה, Lev. 9a; גן עדן, 176a, end. See also Philo, II, 246.

<sup>95</sup> See also Maim., רוצח, 4, 10; Z. Chajes, תורת נביאים, Zolkiew 1836, 18b ff.

name is used (Sanhedrin 7, 12; Mekilta *ad loc.*). Striking parents is punished by death (Ex. 21, 15) only when the blow is a מכה שיש בה חבורה (Sanhedrin 10, 1; Mekilta, *ad loc.*). Death for the latter offense is by strangulation (*l. c.*). Philo (Tischendorf, *Philonea*, 77) makes death the penalty for *every* manner of insult to parents, and death by stoning the penalty for striking parents (*l. c.* and Frag., II, 629). The Karaites<sup>96</sup> agree with Philo and refer Ex. 21, 15 to *any* physical violence against parents; see Mibḥar, Exod., 41*b*: ומכה אביו ואמו: בכל מיני מכה בין שיש בה חבורה; ובין שאין בה חבורה; so also כתר תורה, Exod., 70*b* and Samuel al Magrabi, ed. Gitelsohn, 17. Nor do the Karaites in Exod. 21, 17 condition the use of the Divine Name. See Hadassi, Alph. 272*ט* (103*d*); Mibḥar, Exod. 42*a*; כתר תורה, Exod. 70*b*, and Samuel al Magrabi, *l. c.*, 19. They agree also with Philo in making death by stoning the penalty for violence to parents. See Hadassi, Alph. 267*י* (102*c*) and כתר תורה, Exod. 70*b*; comp. Büchler, *MGWJ.*, L (1906), 683.

Philo (II, 330; but see *Quaest. in Ex.* II, § 6) states that distinction is to be made in punishment between insult to a public officer and a private person. Tradition makes

<sup>96</sup> For the Samaritan view comp. *ZDMG.*, XLVII (1893), 681. Mark 7, 10 ff. and Matthew 15, 5 ff. (comp. commentaries) perhaps refer to this older interpretation of Exod. 21, 17: that *every* manner of insult to parents is punished by death.

The Karaites decry what they falsely ascribe to the Rabbanites: the opinion that punishment is inflicted only when the curse or blow affected *both* parents; Hadassi, Alph., 249, says: חוריו כך במכה אביו ואמו מות יומת; אינו חייב אלא עד שיכה את שניהם בבת אחת וכן בקללה עד שיקללם בבת אחת; so also Alph. 250*ט*; see also Salmon b. Jeroḥam quoted by Neubauer, *Aus d. Petersburger Bibliothek*, 111. See Sanhedrin, 85*b*; Mekilta on Exod. 21, 17; Sifre on Lev. 20, 9.

no such distinction."<sup>77</sup> This view, however, is found among the Karaites. Jepheth b. Ali (quoted in Mibḥar, Exod. 42b) punishes cursing מלך or נשיא with death. Hadassi (Alph. 343<sup>5</sup>) states that cursing a righteous Judge is a *capital* crime; so also Samuel al Magrabi (ed. Gitelsohn, 21) who also states (MS., 147b) that even the cursing of the patriarch of a tribe or family is punished by death.

#### MARRIAGE LAWS

7. The issue of a prohibited alliance<sup>78</sup> is a bastard (לא יבא ממזר בקהל) and the law enjoins concerning him: (ממזר) 'ה (Deut. 23, 3). Tradition (Yebamot 8, 3) refers it to marriage. Philo, as was pointed out by Ritter (91, n. 5),

<sup>77</sup> Weiss, *Dor*, I, 126, note, relying on Kiddushin 66a: הריוט שבִּישְׂרָאֵל: כך הוא דינו ואתה מלך וכהן גדול believes this to have been the Sadducean view (the מלכות was not, as Weiss *l. c.*, states, in accordance with Deut. 22, 18, but because Judah (or Eleazar; see Josephus, *Ant.* XIII, 10, 5) was a single witness; see Pesahim 113b: נגדיה לזיגור...). See also Josephus, *C. Ap.*, II, 23 that disobedience to the high-priest is punished like impiety toward God (comp. *Ant.* IV, 8, 14). It is, however, possible that Josephus had in mind the law of Deut. 17, 12; see Grätz, III<sup>3</sup>, 110, note 1; comp. Ma'im., Maim., פ"המש, Sanhedrin, 10, 5: מיתה לכבוד ולכן חייבתו תורה [לזקן ממרא] מיתה לכבוד אביו ואמו בית דין ומעלתה כמו שחייב המקלל אביו ואמו מיתה לכבוד אביו ואמו.

<sup>78</sup> Against Geiger's anti-traditional interpretation of ממזר (*Urschrift*, 54 ff.; 350) see Rapoport, נחלת יהודה, 78 ff. For the Septuagint see Frankel, *Einfluss*, 204, and for Philo see Ritter, 91, n. 5. Most of the later Karaites agree with the accepted talmudic interpretation of ממזר (Sifre, II, 248; Yebamot 4, 13; Kiddushin 3, 12; see p. Kiddushin 3, 2; Tosafot Yebamot 49a, s. v. שמעון; Maim., איסורי ביאה, 15, 1; Frankel, *Grundlinien d. mosaisch-talmudischen Eherechts*, 5, n. 21 is to be corrected accordingly); see Mibḥar, Deut. 19b; so also גן עדן, 149c: ממוזר הנולד מאיסורי; עירוב מחייבי כריתות; but see Hadassi, Alph. 278<sup>3</sup> (105d) and Samuel al-Magrabi, ed. Gitelsohn, 11, l. 14. For a peculiar interpretation of the concept ממזר by some early Karaites as referring to the Chazars see Harkavy, *Semitic Studies in memory of Dr. Kohut*, Berlin 1897, 246-7.

interprets this verse, verses 2, 4 (II, 261), and v. 9 (II 393) to mean that the *ממזר* is not to mingle with the community of Israel and does not refer to marriage. In his exposition of v. 9, (II, 393) he says: "... *καλειν εις εκκλησιαν και μεταδιδοναι θειων λογων, ους θεμις τους αυτοχθονας και ευπατριδας ιεροφαντεισθαι*."<sup>99</sup> This view, as Samuel al Magrabi informs us, was held by many Karaites (MS., 91b) *ודע כי אשר דברנוהו* הוא על דעת רוב החכמים ו"ל וגם *התיר קצתם זאת הבעילה על תנאי כי יהיה זרעם פחות והוא כי ששן נתן בתו לירחע עבדו והיה מצרי ... ובדעתם כל הנאמר בו לא יבוא לא ירצה בו הבעילה אבל רצונו בזה בעתות הקרבנות והשמות בחופות חתנים ומילות ובקהלות האומה והביא ראייה ממאמרו אשר ציייתי לא יבואו בקהל לך אחר אמרו כי ראתה גוים באו מקדשה*.

This is also the view of most of the Karaites. See Hadassi, Alph. 365 (140b): *"דוק המשפט של ילד הנולד מן ערוות : להוציא ומן אשת איש ומן גויה ומכל דרך אסור בזמן זו גלות נדודי : להוציא הילודים ואמותם מיחם זרע הקדש ... ואם יש חפץ לאחר מישראל להתחתן עמהם יכתב בכתובתם כעורם וקלקול ייחוסם לדורות להחרידי כאשר (148d) 373 Alph. so also ; כתוב ולשישן עבד מצרי ..... Aaron b. Joseph (Mibḥar, Deut. 19b) states that Sahl b. Maṣliḥ (second half of the tenth century) held that marriage with a *ממזר* is not forbidden: *ולא ידעתי טעם לדברי רבנו סהל שאם יחפץ ישראל יקחנו [את הממזר] לא יבא ממזר בקהל*, as did Philo, Hadassi, and the Karaites mentioned by Samuel al Magrabi, to mean that the *ממזר* is not allowed to mingle in the community.<sup>100</sup> See also Mibḥar, l. c.: *בכל דבר : לא יבא בקהל ה' ; טירת כסף, ad loc. והנכון בנשואין לבד*.*

<sup>99</sup> See Michaelis, *Mos. Recht*, II, § 139; Ewald, *Alterth. des Volkes Israel*, 247; comp. also Rapoport, *נחלת יהודה*, 46.

<sup>100</sup> The interpretation given by Geiger (*אוצר נחמד*, IV, 21-2) to this view of Sahl is forced and unnecessary. Geiger's reference (l. c., 22) to Sahl's opinion quoted in Mibḥar, Deut. 6b, has no bearing on his view



8. In the exposition of the law of Deut. 21, 10-15 concerning marriage with a female captive of war, Tradition makes no distinction between a married woman and the unmarried (Sifre, *ad loc.*; Kīddushin 21b: אשת — ואפילו (אשת איש). So also Josephus, *Ant.* IV, 8, 23. The Karaites hold that this law refers only to the case when the captive

here. Sahl's interpretation there of החרם תחלים אתם (Deut. 7, 2; comp. מירת כסף to Mibhar, Deut. 6b, letter 115) is held by many Rabbanites; see e. g. Naḥm. on Deut. 20, 10. The Karaite anti-traditional view (see Kīddushin 3, 13; b. *ib.*, 68ab and parallels) that children born to a Jew from a Gentile woman are considered to be Jews which caused the early Karaites to interpret להוציא in Ezra 10, 3 as referring to the mothers only (Pinsker, II, 23, n. 12; Geiger, *l. c.*; see also Benjamin Nahawendi, משאת בנימין, 6b: אבל מבנות עכו"מז ואמהות בני בלי שם לא ונקראים אלא על שם אביהם שנ' רגשות: 366' (141d) similarly Hadassi, Alph. 366' (141d) הילודים שנולדו מן העריות ואשת איש ואשה נכרית ושפחה הוא זר ונקרא על שם ועל בני נכריות ושפחות כתוב להוציא כל נשים; אביו הוונה; yet he adds: והנולד מהם, so also Alph. 365' (140b) goes back to talmudic times and was held by Jacob of כפר נבוראי (p. Yebamot 2, 6; p. Kīddushin 3, end; G. rab., 7, 3 and parallels) who seems to have been suspected of some מינות (see above, note 73). See also the early Bible critic (ed. by Schechter), *JQR.*, XIII, 362, lines 22-25, and note on p. 371.

The assertion of M. Friedmann (*Beth Talmud*, I, 106) that the Karaites, like Tradition (Yebamot 8, 4, b. *ib.*, 76b ff. and parallels), interpret Deut. 23, 4: עמוני ולא עמונית is erroneous. All Karaites attack this traditional view. See Elias b. Abraham (Pinsker, II, 105); Mibhar and כתר תורה *ad loc.*; גן עדן, 146b; 149d ff.; אדרת אליהו, 93c; אורה צדיקים, 17b; A. Firkowitsch, הותם תכנית (appendix to the מבחר ישרים. Goslow 1835), 51a; comp., however, Hadassi, Alph. 323' (119b). The legitimacy of David (descendant of Ruth the Moabitess) they save by asserting that Deut. 23, 4 refers only to those who do not embrace Judaism.

Schorr (החלוק, IV, 43) claims that Maimonides is inconsistent in considering עמוני ולא עמונית (איסורי ביאה, 12, 18; not 12, 9) the law of הלכה למשה מסיני as this law is disputed, and quotes Yebamot 8, 4: ואם לרין and הלכה. Schorr apparently overlooked the fact that ואם לרין and Tosafot by him quoted refer to the question of עמוני ולא עמונית and have nothing to do with the law of מצרית וארומית.

was unmarried or a widow. See Hadassi, Alph. 281; Mib-  
ḥar, Lev. 34a, and Deut. 17a and כסף, *ad loc.*; כתר תורה,  
Deut. 24a (but see גן עדן, 147d). So also אדרת אליהו, 92b:  
ולכן אמרו חכמינו בשבוייה שהיא אלמנה ... לא לפי דעת בעלי הקבלה  
ש; שאמרו שאין אישות לנביא; so also Abraham b. Josiah Jerushalmi  
in his אמונה אמן (Goslow 1846), 24a. Samuel al Magrabi  
(MS. 222a-b) states: דע כי זה מאמרו בעשרת הדברים לא תנאף יגוש:  
אסור כל אישה בעלת איש אם הוא מאנשי הדת או מזולתם מהאומות....  
ומי יתלה את עניניו ונפשו באשת יפת תאר ובספור הכתוב עליה ואמר  
אולי יהי אישה עודנו בחיים יאמר לו זאת התליה אין בה טענה חזקה  
כי אנשי זו העיר אולי נהרגו .... וגם כי בודאי יהי חקירה על זה  
הענין קודם התחברו עם האשה הנזכרה למען יעשה כפי חפץ הכתוב  
That this is also the view of Philo was shown by Ritter, 75.

9. The penalty of adultery with a married woman is according to Tradition (Sanhedrin 10, 1; Sifra קדושים, 9 (ed. Weiss, 92a) strangulation. Many Karaites, however, hold that the law of Deut. 22, 24 applies not only to the betrothed, but also to a married woman; the punishment being stoning in both cases. So Samuel al-Magrabi speaking of adultery and its punishment says (MS., 6a):

יאמר אומר איך הריגתם יאמר לו הריגתם באבנים כי ידענו זה ממאמרו  
על המאורשה והוצאתם את שניהם אל שער העיר ההוא וסקלתם אותם  
באבנים ומתו כי לא הפריש בין הבעולה והמאורשה במשפט כי המאורשה  
נקראת אשת איש; see also L. Cohn, *Des Samuel al-Magrebi Abhandlung über die Pflichten d. Priester u. Richter*, Berlin 1907, 10, and Mibḥar on Lev. 18, 20 (34a), and טירת כסף  
... וגם בבת ישראל אשת איש הנואפת בין בעולה : רלב *ad loc.*, letter  
; בין מאורשה ענשן אחד שהרי גם המאורשה נקראת אשת איש  
also כתר תורה, Lev. 58b and גן עדן, 194d. That this  
is also the view of Philo is evident from the fact that he

sets death by stoning even for the *unmarried harlot*;<sup>101</sup> see II, 308, where he says: *παλιν πορνην κατα τον ιερον λογον ου παραδεχεται η πολιτεια ... Ως λυμη ονν και ζημια και κοινον μiasμα καταλυσθω*.<sup>102</sup>

<sup>101</sup> See Ritter's comment on this law of Philo (p. 92); but see Book of Jubilees 20, 4 which also seems to punish unchastity of an *unmarried* woman with death (by burning, in accordance with Gen. 38, 24). The early Karaites also considered unchastity of a *פנויה* to be *ניאוף*; see Salmon b. Jerošam quoted by Pinsker, II, 62: *באשת עמיתך וזה : ומלל לא תנאם*; *כדרך הריבונין*; comp. also the opinion of Saul b. Anan quoted there (the authenticity of the *מקדמה* is, however, disputed; comp. also Poznański, *אוצר*, VI, 88a). See also the Samaritan reading of Deut. 23, 18: *לא תחיה* (comp. Klumel, *Mischpatim*, p. VI). See also Brüll, *Jahrbücher*, III (1877), 39, n. 104. It is, however, possible that the Karaites, in fixing stoning as the penalty for adultery, were influenced, as in many other instances (Steinschneider, *Beschneidung d. Araber u. Mohammedaner*, 26-7; *id.*, *Polemische Literatur d. Juden*, 398, n. 1; Wreschner, 41, 44), by the Mohammedan law which also punishes adultery with stoning; comp. ZDMG., LIII (1899), 161.

<sup>102</sup> Noteworthy in this connection is the agreement between the view held by the earliest Karaite authorities (Anan and Benjamin Nahawendi) and the practice in vogue among the Alexandrian Jews in the first century B. C. I refer to Tosefta Ketubbot 4, 9; Baba meš'a 104a; p. Ketubbot 4, 8: *כשהיו בני אלכסנדריא מקדשין נשים אחר (אחר) בא וחוטפה מן השוק* which seems to indicate that the *בני אלכסנדריא* considered betrothal not so binding as *נשואין* (A. Brüll, *Fremdsprachliche Redensarten in den Talmuden u. Midraschim*, Leipzig 1869, 32, note, wrongly translates this passage: "Wenn die Alexandriner sich Frauen angelobten, nahmen sie sie gerade von der Strasse weg."). Büchler (*Festschrift zu Israel Lewy's siebenzigstem Geburtstag*, Breslau 1911, 123, n. 3) justly remarks: "Vielleicht war hierin hellenistischer Einfluss wirksam" (Büchler, *l. c.*, thinks that the words (or *לביתי*) *לחופה* were inserted in the *שטר כתובה* to make the *ארוסין* unbinding. But, then, what was the purpose of the *ארוסין* and of the *כתובה*?). Philo also states (II, 311) that there are many who do not consider unchastity with a betrothed woman to be adultery, though he himself agrees with Tradition (comp. Frankel, *Grundlinien d. mos.-tal. Eherechts*, XXIV ff.) that betrothal is as binding as marriage (*ib.*, and II, 229). See also p. Hagigah 2, 2: *היו בני ירושלים : כותבין : מירושלים הגדולה לאלכסנדריא הקטנה : עד מתי ארוסין יושב אצלם* where *ארוסין* (p. Sanhedrin 6, 6 reads: *בעלי*, but see Halevy, *דורות הראשונים*, Ic, 478, note) is perhaps an allusion to the view of the *בני אלכסנדריא*

10. Philo (II, 310) states that violation of a widow or divorced woman is a crime approaching adultery and the court shall decide upon the punishment whether it be physical chastisement or pecuniary fine.<sup>308</sup> Tradition, as Ritter (90-91) observes, makes no distinction between a divorced woman or widow and a woman who has never been married. A view similar to that of Philo is held by the Karaites, some of them even making carnal intercourse with a widow or divorced woman a *capital* crime while most

concerning ארוסין as not being binding. This view of the Alexandrian Jews was held also by the earliest Karaites who maintained that the betrothed can sever their connections without a writ of divorce and that, in general, betrothal does not have the force of marriage. See Anan (ס"ח), ed. Harkavy, 118 קא אמה : כי יקח איש אשה ובעלה אלמא אי לא בעלה לא צריך (118); so also Benjamin Nahawendi, משאת, שולח מאורשות דין בעדים שלא פרש בהן בגט המקרא שנ' כי יקח, 5b; בנימין, 5b; so also Hadassi, Alph. 365 (141a); comp. also ערן 154c.

Geiger, relying on the view of Beth Shammai: אין ממאנין אלא ארוסות (Yebamot 13, 1), claims that the older halakah distinguished in a similar manner between ארוסין and נשואין (Jüd. Zeitschr., II, 97; Nachg. Schr., V, Heb., 162). As the marriage of a minor by her mother or brothers is only a Rabbinic institution, the view of Beth Shammai concerning מיאון does not prove much. Hadassi, Alph. 250<sup>c</sup> (96b) and 334-5 (123ab) falsely states that according to the Rabbanites a minor given to marriage by her father (Deut. 22, 16) is free to annul her marriage through מיאון and reads in Yebamot 108a: אי זהו מיאון ... אי אפשר בקידושין שקדשוני אבי (Holdheim, מאמר האישות, 53, note, erroneously ascribes this view to Elias Bashyazi; see to the contrary, his אדרת אליהו, ch. 2). For another misrepresentation of a traditional law by Hadassi see above, note 96; see also Bacher, MGWJ., XL (1896), 21, n. 5.

<sup>308</sup> Büchler's suggestion (MGWJ., L (1906), 674, note) that this law of Philo goes back to the more ancient view (represented by Beth Shammai) allowing divorce only in case of the wife's adultery and considering the divorced woman to be still to some extent an איש, is not plausible as it does not account for Philo's view concerning אלמנה. Moreover, Philo and the Karaites do not share the view of Beth Shammai and allow divorce for any cause. See, for Philo, Ritter, 70, note 1 and, for the Karaites, above.

of them are, like Philo, satisfied that a special penalty be imposed on the offender, such as the court may deem best. See Hadassi, *Alph.* 278: חונות חלק הג' הוא הזונה עם האלמנה: או עם הגרושה גדול עונו ומעלו ... ויותר מחמירים עליו משפט מות כי הן נשי איש תקראנה שני' אשת נבל הכרמלי תאמר תורתך: יען כי הלא נבל מימים רבים מת ועוד היתה אשת נבל: וכן שאמר אשר ינאף את אשת איש וגו' בין שהוא חי בין שהוא מת כי בא עליה בלי צווי ותנאי אלהיך כן זאת אלמנה גרושה הן נשי פלוני נשי איש וגרש או מת אסורות והבתולה: 158c, גן עדן so also; וחמורות הן בלי תנאי ואירושי איש שהיא גרושה או אלמנה אף על פי שאינה שוכה מרבית החכמים דנו so also; אותן הבא עליהן כדין הבא באשת איש שהוא מחויב מות... וגם אמר קצת מהחכמים ז"ל כי: Samuel al Magrabi (MS. 86b) האלמנה והגרושה נכנסים גם הם בזאת האזהרה [לא תנאף] אם יתעלל בהם בלא קידושין וברעתו כי השוכה מנאף ויחויב מיתה.

II. Tradition (*Soṭah* I, 1; *Sifre* on Num. 5, 13) makes warning by husband and subsequent סתירה of wife with the man against whom she has been warned condition precedent to subjection of the woman to ordeal of Num., 5, 15 ff.<sup>104</sup> Philo, speaking of this law (II, 308), says that in case the husband suspects his wife of adultery they are to bring the matter before the court in the Holy City (comp. *Soṭah* I, 4) and if the court is undecided the woman is to submit to the ordeal; Philo, evidently, not considering necessary suspicion of a particular man, warning (קנוי) and סתירה.<sup>105</sup> This is also the view of the Karaites. See Hadassi, *Alph.* 328, end and 239; *Mibḥar*, Num. 5a: כתר ואין הטעם כדעת בעלי: 157b, גן עדן so also; תורה, Num. 7a;

<sup>104</sup> One of these must be before witnesses (*Soṭah* I, 1). The accepted norm (*Maim.*, סוטה, I, 1-2) requires witnesses for both.

<sup>105</sup> Ritter (pp. 81-85) discusses this law as given by Philo; he fails, however, to notice this essential deviation of Philo from Tradition.

הקבלה שאמרו שנסתרה כשיעור ביאה ואומרים שצריכה עדי קנוי ועדי כתיבה ואז ראוי להשקות ...<sup>106</sup>

12. Tradition takes Deut. 22, 20: אם אמת היה הדבר to mean that in case adultery *during betrothal* has been established by the testimony of *witnesses*, penalty is death (v. 21) in accordance with Deut. 22, 24 (Sifre, *ad loc.*; Ketubbot 46a; comp. Frankel, *Der gerichtliche Beweis*, 49). Philo, in his exposition of this law (II, 313), says that if the husband's charge be found true, the parents of the woman are guilty of having deceived the husband at the time of the *betrothal*. Philo, evidently, held that the accusation of the husband, whose substantiation involves death, was *unchastity before betrothal*.<sup>107</sup> This is also the view of most of the Karaites. See Hadassi, Alph. 366 (141b-c) that the mere absence of the בתולים is sufficient to convict her: "חייבים אב ואם שלה להכין על היצוע שמלה .... "מענתו עוד אם לא יכינו האם והאב או הנמצאים בעת ההיא את השמלה על המטה וחוא צועק ומגיד בבעילה ראשונה כי לא מצאתי בתולים לנערה .... כיון שמבקשים את השמלה ולא היא נמצאת בסקילה חייבת היא הנערה : טעמו שאמר : לא נמצאו בתולים לנערה : והוציאו את הנערה "דרוש ידרשו הדיינים ואם יש שמלה ופרשו : 365 (140c) השמלה וגו' והאמת יגידו ... ואם אמת היה הדבר לא נמצאו לה בתולים אם מוכת עץ היא או מכלל מכה או מחולי ועדים על זה עידו ... ואם אין

<sup>106</sup> In case the suspected woman refuses to submit to this ordeal she is, according to Tradition (Soṭah 1, 3), to be divorced and forfeits her dowry. Some Karaites consider such refusal *prima facie* evidence of her guilt and say she is to be put to death as an adulteress; see אדרת אליהו, 98a: נחרגת אמנם אם באה לנקות עצמה ומאנה כשתיה נחרגת; comp. *ib.*, 98b. All Karaites agree that in case the woman confesses her guilt, it is sufficient to convict her; see Mibḥar, Num. 5a: שוניתה [שוברת כתובתה ויוצאת] כתר ולדעת חכמי הקראים נחרגת והוא הנכון כי פיה כמאה עדים; comp. also Num. 7b; גן עדן, 156d; אדרת אליהו, 98b and above, note 82.

<sup>107</sup> See *Werke Philos*, II, 207, n. 3. Ritter (p. 77) overlooked this deviation of Philo from Tradition. For the view of Josephus, see Weyl, 87, 105.

זה ולא זה מחויבת היא סקילה כדן תורה. See also Mibḥar, Lev. 38b; comp. טירת כסף, *ad loc.*: שיהי מצינו גם בבית ישראל דין ... כזה המוציא שם רע על בתולת ישראל ואם באמת לא נמצאו בתולים לנערה חייב לה הכתוב סקילה בפתח בית אביה בלי הסגיל תנאי אם שזינתה או נאנסה קודם הארושין או אחר הארושין;<sup>108</sup> so also *ib.* to Mibḥar, Deut. 19a, letter 77. So also Samuel al Magrabi (Ms., 97a): ואמר קצתם כי לא תהרג אלא בשני עדים עליה בנות וזה רחוק ממאמר הכתוב כי הכתוב יגוש זולת זה. The later Karaites agree with Tradition that *negatio virginitatis* is not *prima facie* evidence of her guilt. See אדרת אליהו, 96ab: ואם תביא עדות: שזינתה או נאנסה קודם הארושין אין לה מות. אמנם אם לא תביא נחלקו החכמים. מהם אמרו והם הרוב שאין לה משפט מות אם לא יעידו שזינתה אחר הארושין ... וקצתם אמרו שכל זמן שלא תביא ראיה שזינתה קודם הארושין היא בחזקת שזינתה אחר הארושין וחייבת

<sup>108</sup> Related to this Philonian-Karaite interpretation of Deut. 22, 20 is the Karaite interpretation of Lev. 21, 9. Tradition refers this law to a betrothed or married daughter of a priest (Sifra, *ad loc.*; Sanhedrin 50b ff.; Ps.-Jon., *ad loc.*). The Karaites maintain that this law—שרפה for unchastity in a priest's daughter—refers also to the unmarried. See Hadassi, Alph. 330 (121d); Mibḥar, Lev. 38b: ... ובדעת הקראים בפנויה הכתוב מדבר; so also כהן תורה, Lev. 58b. Samuel al-Magrabi (L. Cohn, *Des Samuel al-Magrebi Abhandlung über die Pflichten d. Priester u. Richter*, 9) even asserts that this law applies also to כהן בן כהן guilty of unchaste conduct with a woman married or unmarried; comp. also Mibḥar, Gen. 60a and טירת כסף *ad loc.* and to Mibḥar, Lev. 34a, letter 232. This is also the view of Philo (? Hoffmann, *Leviticus*, II, 90) and Josephus (*Ant.*, IV, 8, 23; comp. Ritter, 81; P. Grünbaum, *Die Priestergesetze bei Flavius Josephus*, Halle 1887, 18, n. 2; Weyl, 106). Comp. also B. Beer, *Das Buch d. Jubiläen u. sein Verhältniss zu den Midraschim*, Leipzig 1856, 58. The view of Büchler (*MGWJ.*, L (1896), 681, n. 2) that this was also the view of R. Eliezer (Sanhedrin 51a) is very improbable; comp. also Weiss, *Dor*, I, 151.

For the mode employed in the execution of בת כהן (באש תשרף) Lev. 21, 9) which, according to Rab Joseph (Sanhedrin 52b), was taken by the Sadducees (so also Josephus, *Ant.*, IV, 8, 23) literally (comp. Brüll, בית, תלמוד, IV, 7 ff.; Weiss, *Dor*, I, 151; Büchler, *l. c.*, 549 ff., 557 ff.) the Karaites disagree among themselves; see Samuel al-Magrabi, *l. c.*; comp. also Hadassi, Alph. 324<sup>p</sup>.

משפט מות; the later Karaites thus disagreeing among themselves only as to the mode of proof of the woman's guilt or innocence *after* betrothal.<sup>100</sup>

13. Num. 36, 6-10 provides that when a man dies without male issue and his daughter inherits his property, the heiress is to marry only within her tribe so that the allotment of one tribe might not pass over to another. According to talmudic interpretation (Baba batra 120a ff.; comp. Pseudo-Jonathan on verse 6: דא פתנמא דפקיד ה' לא לרריא דעתידין למיקום בתר פילוג ארעא אלהן לבנת צלפחד and *Urschrift*, 447) this rule applied only to the "generation of the conquest," while according to Samuel (B. b. 120a) even in the case of the daughters of Zelophehad it was not a command, but merely counsel: עצה טובה השיאם הכתוב (but comp. Ritter, 97, n. 1, and Ibn Ezra, *ad loc.*, v. 8).

Philo<sup>100</sup> states that in case a daughter inherits she is to marry one of her *relatives* (based perhaps on Num. 36. 11), in the absence of which she must at least not marry out of her tribe, thus applying the law of Num. 36, 6-10 to all generations.

<sup>100</sup> According to the scholion of Megillat Taanit (ch. 4) the Boethusians interpreted ופרשו השמלה literally (ממש). Rapoport (דברי שלום ואמת, 14); Geiger (*Urschrift*, 148) and Ritter (133 ff.; comp. Büchler, *l. c.*, 680, note; comp. Weiss, *Dor.*, I, 117) consider this report unauthentic as this view is held also by R. Eliezer b. Jacob (Sifre, II, 237; Ketubbot 46a); see, however, Halevy, דורות הראשונים, Ic, 415-18.

<sup>101</sup> See Treitel, *MGWJ.*, XLVII (1903), 409. Philo explains also the law of *yibbum* (Deut. 25, 5-11) as a means that the allotment of one might not pass over to another (II, 443; Ritter, 69, n. 3 errs in asserting that Philo mentions nowhere the law of *yibbum*) which is also the prevailing view among the later Karaites (comp. Poznański, *REJ.*, XLV (1902), 62). Josephus also considers the law of Num. 36, 7 as applying to all times (*Ant.*, IV, 7, 5; comp. Ritter, 96-7). This view is shared also by the author of Tobit 6, 12-13; comp. M. Rosemann, *Studien zum Buche Tobit*, Berlin 1894, 3 ff. and F. Rosenthal, *Vier apokryphische Bücher*, Leipzig 1885, 116, note.



The Karaites, like Philo, apply the law of Numb. 36, 6-10 to all times; see Hadassi, *Alph.* 260 (99a); Mibḥar, *ad loc.* (33a), and כתר תורה, Num., 50b: וכל בת יורשת נחלה: בא להתמיד הדבר לדורות על כן לא יתכן מאמר בעלי הקבלה ... עד גן עדן; שאמרו שהמצוה לשעתה אלא אח"כ תסוב הנחלה ורע כי הבת: 171b; so also Samuel al Magrabi (MS., 263a): וזולתה מהנקבות אם יתהוה להן ירושה מנחלת ארץ לא יכשר להן כי יהיו לנשים מזולת השבט שלהן למען לא יתהוה להן זרע מזולת השבט וירש אותן אחר מותן ותצא הנחלה הנזכרה לזולת השבט ...

14. The law of Lev. 21, 2-3 enjoining the priests not to defile themselves by approaching a dead body says, "But for his kin that is near to him..." (v. 2a), כי אם לשארו. הקרוב אליו.

The talmudic interpretation finds in the words כי אם לשארו support for the tradition that a priest is to defile himself by approaching the body of his wife<sup>111</sup> (Sifra, *ad loc.*: Yebamot 22b). The Karaites, rejecting this interpretation of שארו<sup>112</sup>, forbid the

<sup>111</sup> See Maim., אבל, 2, 7: ואינו מטמא לה אלא מדברי סופרים; comp. commentaries and לחם משנה, *ib.*, 2, 1. Weiss (*Dor*, I, 46, note) quotes: (Zebahim 100a; Sifra, Emor, 1; Semahot, ch. 4) ... וטימאוהו בעל כרחו as proof that the law of כהן לאשתו was not universally accepted. Weiss apparently overlooked the fact that the wife of יוסף הכהן died בערב הפסח (*l. c.*) and defilement would have barred him from participation in the קרבן פסח, whereas כהן לאשתו is, according to many, only רשות; see Zebahim, *l. c.*; and Tosafot Soṭah 3a, s. v. לה; comp. Büchler, *Der Galiläische Am-ha-Areṣ*, 205 and n. 2.

<sup>112</sup> Most of the Karaites reject also the talmudic interpretation of לשארו in Num. 27, 11 (Baba batra 8, 1; Sifre, *ad loc.*; Maim., נחלות, 1, 8 accepts the view (Ketubbot 84a) that ירושת הבעל is only מדברי סופרים) and hold that the husband does not inherit his wife; see Mibḥar, Num., 37a; עדן, 170d ff.; כתר תורה, Num. 42a; אפריון, 28; לבוש מלכות, 50. Mordecai b. Nisan (*l. c.*, לבוש מלכות) states: וירש אותה היא מצוה בפני עצמה והרצון שהבעל יורש את אשתו ..... והם החליפו הכתוב מעיקרו ...

defilement of a priest in case of wife's death; see Mibḥar *ad loc.* (38a) (comp. טירת כסף, *ad loc.*: בי אם לשארו הקרוב אליו: לא יתכן להיות אשתו ומננך לבעלי הקבלה שאמרו אין שארו אלא אשתו והתירו לכהן ליטמא באשתו; so also בחר תורה, *ad loc.* (58a): ובועלי מקרא אמרו שאסור ליטמאות באשתו Alph. 206<sup>ר</sup> and אדרת אליהו, 171a; Philo (II, 230) speaking of the law of Lev. 21, 2-3 mentions the six blood-relations, enumerated in these verses, as those for whom the priest is to defile himself, evidently excluding like the Karaites the wife.

15. Philo and the Karaites also agree in the interpretation of Lev. 21, 14. Philo (II, 229) interprets this law to mean that the high-priest must choose his wife from priestly lineage.<sup>118</sup> That this is also the interpretation

(?) ואפילו חכמיהם האחרונים אינם מסכימים לפירוש זה (Benjamin Nahawendi agrees with Tradition (ס"המ לענין), ed. Harkavy, 179). Hadassi (Alph. 365<sup>ה</sup> (140a); 367<sup>ה</sup> (142c) holds that the husband inherits his wife if they have children; Samuel al-Magrabi (MS., 269) states: ותדע כי החכמים נחלפו בענין: מי שם ירושתה לאישה אם היא תחת ממשלתו ורשותו והם בני משנה וקצת מחבמינו ז"ל ומהם והם הרבים מחבמינו ז"ל לא ראו בכך comp. Weiss, *Dor*, I, 46, note.

<sup>118</sup> See Ritter, 73, n. 2 and Hoffmann, *Magazin*, VIII (1881), 56. It is, however, possible that Philo recorded here a custom which he believed to be a law. Büchler (*Die Priester u. d. Cultus*, 88-9; comp. also Berakot 44a; Pesahim 49a; Rashi, Yebamot 84b, s. v. בואי) has collected instances which tend to show that also ordinary priests married only daughters of priests (comp. also Grätz, *MGWJ.*, 1879, 499 and Krauss, *JQR.*, VIII, 671). The custom to marry within the family was considered praiseworthy even for non-priests and is commended by the Rabbis; see Tosefta Kiddushin 1, 2; Yebamot 62b; p. Kiddushin 4, 4; Gen. rabba 18, 5; see also Book of Jubilees 4, 15-33; 8, 5-6, 9, 7; but see Kohler, *JQR.*, V (1893), 406, note); comp. also Tobit, 6, 12-3 and *MGWJ.*, 1879, 507, 510 ff. For the view of Josephus see M. Zipser, *Des Flavius Josephus Werk: Gegen Apion*, Wien 1871, 30; Ritter, 73 and P. Grünbaum, *Die Priestergesetze bei Flavius Josephus*, 29-30.

To the Karaite authorities mentioned by Geiger (*l. c.*) that the high-priest is to marry the daughter of a priest may be added Samuel al-Magrabi (ed. Cohn, 12, l. 24 ff.; Cohn, *ib.*, note 111 remarks: "Diese Ansicht ist nur karäisch, vielleicht nur die des Autors"!).

of the Karaites was already observed by Azariah de Rossi (מאור עינים, ed. Wien, 68a) (comp. Geiger, *ZDMG.*, XX (1866), 561 ff.; *Nachgelassene Schriften* III, 311-14 V, Heb., 133 ff.; *Jüd Zeitschr.*, VI, 265).

#### CEREMONIAL LAWS

16. Philo, speaking of the First of the seventh month (II, 295), says that it is called Day of Trumpets, as trumpets are blown that day at the offering of the sacrifices. Their sounding is a commemoration of the giving of the Law. The trumpet being an instrument of war, symbolizes the war between the different forces of nature and humanity, for the pacification of which man must be grateful. Philo makes no mention of the traditional interpretation of יום תרועה (Num. 29, 1), i. e. that the "Shofar" (Sifra on Lev. 25, 9; see Hoffmann, *Leviticus*, II, 247) is to be sounded everywhere (except on sabbath; R. ha-shanah 29b) in Israel on that day and seems to have identified יום תרועה in Num. 29, 1 with ותקעתם בחצצרת, the blowing of trumpets every holiday at the offering of sacrifices (Num. 10, 10).<sup>114</sup> The Karaites also reject the traditional interpretation of תרועה and explain it as loud praises to God (Hadassi, Alph. 225; 364 (136a) גן עדן; 58a ff.; כתר תורה; Lev. 67a; אדרת אליהו; 48a; אפריין; 13; לבוש מלכות; 48-9) or

<sup>114</sup> Nor does Josephus (*Ant.* III, 10, 2) mention the law of תקיעת שופר; comp. also Book of Jubilees, ch. 6. The Samaritans, like the Karaites, reject the traditional interpretation of יום תרועה, differing among themselves as to its meaning; see Geiger, *ZDMG.*, XX, 570; Hanover, *Das Festgesetz der Samaritaner nach Ibrahim ibn Jakub*, text, pp. X-XI and *ib.*, 28, 68. Some Karaites take יום תרועה to mean the blowing of any instrument on that day (Mibḥar, Lev., 42b; גן עדן, l. c.). Samuel al-Magrabi (MS. 41a) states that תרועה is the sounding of *ḥaṣoṣrot* by priests and, in absence of authenticated priests and *ḥaṣoṣrot*, not to be observed now.

as the sounding of *חצצרת* on every holiday (comp. *גן עדן*, 58*d*; Hadassi, 136*a*).

The Karaites also reject the traditional interpretation of *ולקחתם לכם ביום הראשון* (Lev. 23, 40) (see Josephus, *Ant.* III, 10, 4) and claim that the "four species" are for the construction of the "booths" mentioned in verse 42, deriving support for this view from Nehem. 8, 14 ff. See *גן עדן*, 56*ab* (where the views of Anan, Benjamin Nahawendi, and Daniel, al Kūṣi are quoted); Hadassi, Alph. 168 (64*b*); 225-6; 364 (136*a*); Mibḥar, Lev. 43*a*; *כתר תורה*, Lev. 67*b*; *אדרת אליהו*, 47*b* (where the opinion of Jepheth b. Ali is quoted); Pinsker II, 96; *אפריון*, 14; *לבוש מלכות*, 34, 49.<sup>115</sup> Philo, speaking of the Feast of Tabernacles (II, 297), makes no mention of the law of "four species." Philo, as Treitel (*MGWJ.*, 1903, 512) suggests, must have understood verse 40 not as a separate commandment but,<sup>116</sup> like the Karaites, as prescribing material for the booths.

17. Tradition (*Zebaḥim* 5, 8; *Maim.*, *ה' בכורות*, 6, 4) interprets Lev. 27, 32 to mean that the animal-tithe, *מעשר בהמה*,

<sup>115</sup> Some Karaites agree with Tradition in the interpretation of *ולקחתם לכם*; see *גן עדן*, 55*b* and the opinion of Joseph ha-Kohen (*l. c.*, 55*d*; *כתר תורה*, Lev. 67*b*; *אדרת אליהו*, *l. c.*).

The Samaritans agree with the Karaites; see Geiger, *ZDMG.*, XX, 544; Hanover, *l. c.*, 16 and 62 (Hanover, 31, n. 2, relying on the words of Ibn Ezra on Lev. 23, 40: *והביאו ראיה מנחמיה* and *והצדוקים* believes that the Sadducees shared this view, unaware that by *והצדוקים* Ibn Ezra refers, as usual, to the Karaites (see above, note 10); see, however, M. Duschack, *Josephus Flavius u. d. Tradition*, 27 and Grätz, III, note 10). Josephus agrees with Tradition (*Ant.*, III, 10, 5); so also the Falashas (Epstein, *Eldad ha-Dani*, 162). See also Book of Jubilees 16, 4 and B. Beer, *Buch d. Jubiläen*, 47.

<sup>116</sup> It must, however, be pointed out that Philo (*l. c.*), in contradistinction to Josephus (comp. M. Olitzki, *Flavius Josephus und die Halacha*, p. 25, n. 31 and p. 50), does not seem to require the construction of special booths for the Feast of Tabernacles.

like the "second tithe," is to be eaten by the owner within the walls of Jerusalem. Philo (II, 234, 391; comp. Ritter, 123; Driver, *Deuteronomy*, 170, note is to be corrected accordingly) states that the animal-tithe is to be given to the priests.<sup>117</sup> The Karaites agree with Philo. See Mib-ḥar, Lev. 51a; בתר תורה, Lev. 76b.

18. Tradition applies the law of Lev. 22, 19 (תמים) to animal sacrifices only (Sifra to Lev. 1, 14; Menaḥot 6a and parallels). Philo, as is evident from the reason given by him for the law of תמים (II, 238) holds that תמים refers also to תורים ובני יונה. The Karaites agree with Philo. See Mib-ḥar, Lev. 3b, והנכון .... פוסלין בעוף; שאלו הפרשיות למדות זו מזו ואמרו בעלי הקבלה אין המומין פוסלין בעוף; see also בתר תורה, Lev., 5a.

19. Philo (II, 256; comp. *Werke Philos*, II, 93, n. 1) states that all the lights of the sacred candle-stick (מנורה) were extinguished in the morning. According to Tradition (Tamid 6, 1; Sifre on Num. 8, 2; Tosefta, Soṭah 13, 7; Yoma, 39a<sup>118</sup> and parallels; comp. also Naḥm. on Ex. 27, 20 and Tosafot Menaḥot 86b s. v. ומנה; comp. M. Duschak, *Josephus Flavius u. d. Tradition*, Wien 1864, p. 4, which is to be corrected accordingly) one light was left burning the whole day (נר המערבי). Josephus (*C. Ap.*, I, 22) also states that the lights were never extinguished (see *Ant.*, III, 8, 3 that *three* lights burned in the Temple during

<sup>117</sup> So also Book of Jubilees 32, 15 and Tobit 1, 6. Ritter, 123 overlooked that Philo (II, 234) disagrees with Tradition (Bekorot 9, 1) also in requiring מעשר בהמה to be given from all domestic animals. See also Schechter, *Jewish Sectaries*, II, 4, ll. 13-15; comp., however, Hadassi, *Alph.* 205.

<sup>118</sup> See Tosefta Soṭah 13, 7; Yoma 39a; p. *ib.*, 6, 3: ארבעים שנה ששמש שמעון הצדיק .... והיה נר מערבי דולק [כל הלילה] מכאן ואילך פעמים דולק שמעון הצדיק; but see Weiss, *Dor*, I, 82, note 1, that this refers to שמעון who lived about forty C. E.; see Maim., תמידין ומוספים, 3, 12 and *ad loc.*: comp. ת' הרשב"א, ed. Wien, No. 309.

daytime!) The Karaites hold, like Philo, that no lights burned in the Temple during the day. See Mibḥar, Exod. 57*a* and בְּתֵר תּוֹרָה, Lev. 85*b*.

20. The Karaites reject the ancient traditional law<sup>119</sup> that vows made and oaths taken without due consideration of the circumstances involved may be annulled by a court as those of a daughter by her father (Num. 30, 5-6) and that of a wife by her husband (*l. c.*, v. 7 ff.). See Hadassi, Alph. 139-141, 364 (135*a*); Mibḥar, Num. 29*a*; לְבוּשׁ מַלְכוּת, 51; comp. also Maim. commentary on Nedarim, ch. 10, end; ... שׁוּא אֶצְלֵינוּ בְּעֵרֵי הַמַּעֲרָב ר"ל הֵיתֵר הַשְּׁבוּעוֹת מַעֲשִׂים בְּכָל יוֹם לְפִי מִשְׁנֵה תּוֹרָה, and *id.*, שֶׁבְּמִקּוֹמֵינוּ אֵין נוֹבְעִין בְּהֵן מִים הָרַעִים ר"ל הַמִּינּוֹת, 12, 12. This seems to be also the view of Philo who seems to express his objection to the law of annulment of vows by the statement (II, 273; comp. *Werke Philos.*, II, 112, n. 2) that "*no man is competent to heal vows.*"<sup>120</sup>

<sup>119</sup> Weiss (*Dor*, I, 81) believes that the law of הִתְרַת נְדָרִים was inaugurated in the time of Simon the Just. This opinion of Weiss is based on his view (*l. c.*, 80; so also Geiger, *Urschrift*, 31-2) that שְׁמַעוֹן הַצִּדִּיק did not favor the making of vows; see, however, Rapoport, נַחֲלַת יְהוּדָה, 23 ff. We do not know whether the law of הִתְרַת נְדָרִים was even contested by the Sadducees; comp. p. Berakot 7, 2; Gen. rabba 91, 3. Schechter (*Jewish Sectaries*, I, XVIII; comp. *ib.*, p. 16, ll. 7-8 and notes) believes that the sect which he designates "Zadokite" (see above) held that vows cannot be annulled; comp. also K. Kohler, *American Journal of Theology*, 1911, 425-6.

<sup>120</sup> The later Karaites accepted, with slight modifications, the law of הִתְרַת נְדָרִים; see Kaleb Afendopolo's appendix to אֲדֻרַת אֵלִיָּהוּ, Odessa 1870, 227*a* ff. It is, however, possible that in rejecting הִתְרַת נְדָרִים the early Karaites, as in several other instances, turned into a law the general sentiment among the Babylonian Jews during the Gaonic period against the annulment of vows. Jehudai Gaon (quoted by Naḥshon Gaon) states: דֹּאנֵן הַלְכוֹת, לֹא גִרְסִינֵן בְּנְדָרִים וְלֹא יִדְעִינֵן לְאַסֵּר וּלְהַתִּיר בִּהּ לֹא נִדָּר וְלֹא שְׁבוּעָה; see חֲמֵרָה גִּנּוּזָה, פְּסוּקוֹת, ed. Müller, No. 122; comp. *ib.*, Nos. 117, 120; תּוֹרַתָּן שֶׁל רִאשׁוֹנִים, Nos. 6, 44, 75; שְׁעָרֵי תְּשׁוּבָה, Nos. 38, 137, 143, 145-6;

21. The Karaites agree with Philo also in the interpretation of **לֹא תִבְשֵׁל גְּרִי בַחֲלֵב אִמּוֹ** (Exod. 23, 19; 34, 26; Deut. 14, 21) as prohibiting the seething of a kid or—by analogy—of any other animal in the milk of *its* mother. See Philo II, 399; comp. Ritter, 128.<sup>121</sup> See Hadassi, Alph. 240 (91cd); 360<sup>a</sup> (132d); Mibḥar, Exod. 47b; **בְּחֵר תּוֹרָה**, Exod. 79ab.<sup>122</sup>

22. The law of Ex. 13, 13; Num. 18, 15 enjoins the redemption of the firstling of an ass with a lamb, and that, if the owner fails to redeem, the firstling is to be killed by having its neck broken. According to Tradition this law refers only to an ass but not to the firstling of any other unclean animal (Mekilta, *ad loc.*; Sifre on Num. 18, 15; Bekorot 5b). Philo makes this law apply to all *domestic*

ed. Horowitz, I, Nos. 12, 14; so also Sar Shalom Gaon: **כָּךְ רָאִינוּ שֶׁאֵין** שְׂעִירֵי הַשּׁוֹבָה, בדורות הללו מי שיכול להתיר נדרים וכו' **שֶׁבִּשְׁבוּעוֹת** No. 141; שְׂעִירֵי הַשּׁוֹבָה, ed. Lyck, No. 37; see however, *ib.*, No. 11 end; שְׂעִירֵי הַשּׁוֹבָה, No. 48 and **אֵין הֵם**, *ad loc.*).

<sup>121</sup> See Hüllin 8, 1 ff.; Mekilta on Exod. 23, 19; Sifre on Deut. 14, 21. The Samaritans agree with Tradition; see Geiger, *Nachg. Schr.*, III, 303-4; Wreschner, *Intr.*; XXVI. For the view of the ancient Samaritans see Geiger, *l. c.*, 305-6 and *Nachg. Schr.*, IV, 66, 126. For the LXX see Frankel, *Vorstudien*, 183. The practice of the Falashas agrees with the view of Philo and the Karaites (Epstein, *Eldad ha-Dani*, 130, 173; Epstein, *l. c.*, 129-131 believes that this was also the view of Eldad ha-Dani; but see No. 35 of Eldad's Halakah, ed. Epstein. 121). Against the view of Rapoport **עֵרֵךְ מִלֵּין**, 101a (comp. Ritter, 128) that the law of **בָּשָׂר בַּחֲלֵב** was not universally known in Babylonia even long after the destruction of the Second Temple see Halevy, **דורות הראשונים**, I, 128.

<sup>122</sup> For Anan's interpretation of **לֹא תִבְשֵׁל גְּרִי בַחֲלֵב אִמּוֹ** see Harkavy, **סִ"ה מ' לענין**, 152, n. 1. For other interpretations of this verse by some early Karaites see Hadassi, Alph. 240 (91cd); Jacob b. Reuben (Harkavy, *l. c.*, 155) and Ibn Ezra on Exod. 23, 19. Most of the later Karaites accept the traditional interpretation of **לֹא תִבְשֵׁל**; see Geiger, *Nachg. Schr.*, III, 303; comp. also **בְּחֵר תּוֹרָה**, Exod. 79a; Samuel al-Magrabi, ed. Lorge, 20-22; **אִפְרִיין**, 24.

animals (II, 233; Ritter, 119 ff.).<sup>122</sup> This is also the view of the Karaites. See Anan (ed. Schechter, p. 7, ll. 8-15): הטמאה בשה טאפי האכא הי לאדעך דעל כל ב[המה קאי] והאיי דפרט התם בחמור מישום דכל בהמה טמאה [בכלל חמור] דכת' שורך וחמרך וכל בהמתך אמא מבהמה טהור[ה שור ומבהמה] טמאה חמר ואמא בתריה וכל בהמתך באלה [כללה?] לבהמ[ה טהורה בהדי] שור ולבהמה טמאה בהדי חמור ומישום הכי כת' וכל ב[המתך] לאדעך דעל כל פטר רחם ופטר חמר: כי נראה שלא, Exod. 35a; כתר תורה, Alph. 204; הקדיש מבהמות הטמאות כי אם פטרי חמור לבד וכן דעת בעלי הקבלה ובני מקרא אומרים זה הקש לכל בהמה טמאה.

<sup>122</sup> So also Josephus, *Ant.*, IV, 4, 4. As Olitzki suggests (*Flavius Josephus und die Halacha*, 29) this anti-traditional view of Josephus may be due to his desire to remove any suspicion that the ass occupied a favorable position in Jewish law. This may also account for the view of Philo. Philo omits the law of וערפתו (Exod. 13, 13; comp. Ritter, 120; Olitzki, *Magazin*, XVI, 178.). Nor do all the Karaites accept the literal interpretation of וערפתו; see the opinion of Sahl b. Mašliah quoted in Mibḥar, Exod. 19b (comp. Ibn Ezra, *ad loc.*). Aaron b. Joseph (Mibḥar, l. c. and Num. 17b) agrees with Tradition that only the ass is to be redeemed.

The contradiction between Exod. 13, 2 (פטר כל רחם בכני ישראל באדם) and Deut. 15, 19-20 (לפני ה' אלהיך תאכלנו) and between Lev. 27, 26 (לא יקדיש איש אותו) and Deut., l. c. (הזכר תקדיש) led many Karaites to refer Deut. 15, 19-20 to בכור עדר of clean animals which, as they believe, in contradistinction to בכור פטר רחם is to be declared קדוש by the owner and, like the "second tithe," to be consumed by him within the walls of Jerusalem or redeemed; see Hadassi, Alph. 204-5; Mibḥar, Deut. 12b; כתר תורה, Deut. 19a (Ibn Ezra on Deut. 12, 17 refers to this Karaite view; Harkavy, *ס"ה לענין*, 142, n. 16, is to be corrected accordingly). Anan tried to reconcile the above mentioned contradictions by claiming that the firstling whose conception and birth were while its mother belonged to an Israelite is קדוש *ipso facto* and to be given to the priests (Exod. 13, 2; Lev. 27, 26, Num. 18, 15), whereas the בכור who was owned by an Israelite only at the time of its birth is to be made קדוש by the



The Philonian halakah, in general, is a problem still to be solved. Philo lived in Egypt where as we now know from the papyri recently discovered in Assuan and Elephantine (Sayce-Cowley, *Aramaic Papyri discovered in Assuan*, London 1906; Sachau, *Drei aramäische Papyrusurkunden aus Elephantine*, 1908), the Jews were permanently settled in the sixth century B. C. (comp. Schürer, *Geschichte des Jüdischen Volkes*, III <sup>4</sup>, 24 ff.).<sup>124</sup>

Alexander the Great transplanted many Jews into Egypt in 332 B. C. (Josephus, *Bell. Jud.* II, 18, 7; *Contra*

owner and belongs to him (Deut. 15, 19-20). See Anan's *Book of Commandments* (ed. Schechter, p. 6, ll. 7-18): וְקָא [א]מָא לִי הוּא וְאִפְּ עַל גַּב: דְּלֹא מְקַדֵּשׁ [יְתִי]ה וְכַתֵּב כָּל הַכְּבוֹד [אֲשֶׁר יוֹלֵד בְּבִקְרָךְ וּבְצִמְאֻנְךָ] הוּא 'ת' לִי וְאֵלֶּהִי קָא אִמָּא אֲשֶׁר יוֹלֵד לְאִדְעָךְ דְּעַל כְּבוֹד [דָּא]ת[י]לודי בִּינִי יֵשׁ קָאִים וְלֹא דְמוֹדְרַע אֲזִרְרוּעִי וְקָא אִמָּא [תְּקִדִּישׁ לֹה'] אֵלֶּהִי דְצִרִיבַת לְאִקְדוּשִׁיהּ וְקָא אִמָּא בְּתֵרִיָּה לְפָנֵי ה' אֵלֶּהִי [לְאִזְדַּע] לָךְ (?) דְּהֵאִי כְבוֹד דְּאֵתִילודִי הוּא דְּאֵתִילודִי בִּינִי יֵשׁ וְלֹא [דְּמוֹד]רַע בִּינִי יֵשׁ מְרוֹאֲתִיָּה נֹאכְלוּהּ בְּבֵית הַמְּקַדֵּשׁ ... וְכַתֵּב אֶךְ כְּבוֹד אֲשֶׁר [יִבְכֵּר קָא א]מָא אֲשֶׁר יִבְכֵּר לִי בְּבֵהֶמ' לְאִדְעָךְ דְּעַל כְּבוֹד דְּמֵן כִּד אֲזִרְרַע [בְּקִדּוּשׁ]תָּא קָאִים וְהִינוּ כְּבוֹד דְּמוֹדְרַע אֲזִרְרוּעִי בִּינִי יֵשׁ וְקָא אִמָּא [לֹא יִקְדִּישׁ אִי]שׁ אֲתוּ דְּלֹא צִרִיךְ אִקְדוּשִׁיָּה וְכ' כָּל פֶּטֶר רַחֵם לְכָל בָּשָׂר [וְקָא אִמָּא בָּאֲדָם וּבְבֵהֶמָּה וְיִהִי לָךְ קָא אִמָּא לָךְ דְּכַבֵּד מִזְדַּרַע [אֲזִרְרוּעִי בִּינִי] יֵשׁ לְכַהֵן יִהְיִינוּ לִיָּה comp. also *ib.*, p. 8, ll. 15-26 and p. 9, ll. 9-10, 21 ff. Kīrkīsani alludes to this view of Anan (ed. Harkavy, 248) and states that the authority for this law of Anan was found in one of Jannai's liturgical compositions. Harkavy, *Studien u. Mittheilungen*, V, 107, note, is to be corrected accordingly.

<sup>124</sup> See also Rapoport, נחלת יהודה, 128-9; *id.*, ערך מלין, 100b ff.; Ritter, 6, 8-9. Herzfeld, *Geschichte*, III, 463; Frankel, *Vorstudien*, 10, and notes; *id.*, *MGWJ.*, 1852, 40.

On the Egyptian Jews and their relation to Palestine see the literature quoted by Schürer, *l. c.*, 147 ff., and in Sweet's *Introduction to the Old Testament in Greek*, Cambridge 1902, 3 ff. In the third and fourth centuries C: E. there were still some Amoraim in Alexandria; see p. Erubin 3, 9; p. Kiddushin 3, 14; comp. Frankel, מבוא הירושלמי, 77a. It may also be pointed out that Judah b. Ṭabbai, to whom the later Karaites (see above, note 4) ascribe the beginning of Karaism, lived in Alexandria; see p. Ḥagigah 2, 2; p. Sanhedrin 6, 6; comp. Frankel, דרכי המשנה, 34-5; Weiss, *Dor*, 128, n. 1; Halevy, דורות הראשונים, I, c, 474 ff.

*Ap.*, II, 4; comp. Schürer, *l. c.*, 35 ff.; 40). The city of Alexandria early became a great center of Jewish activity, second only to Jerusalem. The existence of the Temple of Onias did not affect the loyalty of the Jews in Egypt to the Sanctuary in Jerusalem (Frankel, *Einfluss*, 157; Schürer, *l. c.*, 147-8). Palestinian scholars often visited Alexandria (Rapoport, ערך מלין, 101*b*). The Palestinian interpretation of the Law and the practices in vogue there were not unknown to them (Frankel, *Vorstudien zu der Septuaginta*, 185-186; comp. Halevy, דורות הראשונים, I, 127, note; 129, note) and the influence of Palestinian exegesis is patent in that great monument of the Jews of Egypt, the Septuagint (Frankel, *Vorstudien zu der Septuaginta; Ueber den Einfluss d. paläst. Exegese auf d. alex. Hermeneutik; Ueber paläst. und alex. Schriftforschung*; but see Herzfeld, *Geschichte*, III, 548 ff.). Philo, the great representative of Egyptian Jewry, knew of the existence of an oral tradition and considered it as binding as the Written Law (see the references by Ritter, 14-5; comp. Neumark, *Geschichte d. Jüdischen Philosophie des Mittelalters*, II, Berlin 1910, 418, note; see, however, *Werke Philos*, II, 289, note).<sup>128</sup> He also visited Palestine and there saw the people living according to that Tradition (Grätz, *MGWJ.*, 1877, 436 ff.). How are we then to account for the interpretations and decisions in which Philo deviates from traditional halakah? Are such deviations subjective opinions of Philo?<sup>129</sup> Do they reflect the actual practices

<sup>128</sup> See also Ritter, 16-7. For Philo's *eruditio hebraica* see the references by Ritter, 10, n. 2 and by Schürer, *l. c.*, 699; comp. also L. Löw, *Ges. Schr.*, I, 7, 303.

<sup>129</sup> See Treitel, *MGWJ.*, 1903, 415; but see Ritter, 15-16.

in vogue among Egyptian Jewry<sup>127</sup> or do they go back to a peculiar tradition?<sup>128</sup>

But be this as it may, the fact, which I have attempted to demonstrate, that *in most of Philo's deviations from Tradition the Karaites hold the same view*, points to some kind of dependence of the latter on Philo, or to common descent from a particular tradition. The former view gains in probability from the following:

The Hellenic or Alexandrian method of interpretation of the Scriptures did not remain unknown to the Palestinian teachers of the law and the works and views of Philo found their way to the Palestinian schools.<sup>129</sup> Moreover, the general belief that Philo and his works were lost to the Jews of the Middle Ages until Azariah dei Rossi, about

<sup>127</sup> So Ritter 16-17; comp. *ib.*, 28, 63 ff., 90, 93; but see *Werke Philos*, II, 48, n. 2; 202, n. 3; 258, n. 1. Frankel (*Über palästinische u. alexandrinische Schriftforschung*, 32, nu. 6; *Einyuss*, 157 see *ib.*, 33, n. 9 and pp. 190-201) believes that Philo's exposition of the sacrificial ritual goes back to the practice of the Temple of Onias; comp. also Grätz, *MGWJ.*, 1877, 436; but see Ritter, 109, n. 2; 112.

<sup>128</sup> See L. Cohn, *Werke Philos* I, 14. The view of Büchler (*MGWJ.*, L (1906), 706; see also Lauterbach, *Jewish Encyclopedia*, X, s. v. Philo, 166) that Philo's deviations from traditional halakah represent an earlier halakah (that of Beth Shammai) is still to be proved. Geiger who scanned Jewish literature and that of its sects for traces of ancient halakah took no account, as already remarked by Poznański (*Abraham Geiger, Leben u. Lebenswerk*, 372, n. 1), of Philo. Philo's deviations from Tradition cannot be brought into relation with Sadduceism and the supposed ancient halakah related to it; comp. Rapoport, ערך מלין, 101a. Philo interprets ממתרת השבת like the Pharisees (Frankel, *Einfluss*, 137). He considers (II, 230) like the Pharisees (Menahot 65a) the קרבן תמיד a public offering; allows divorce without ערוות דבר (Ritter, 70, n. 1) and seems to agree with the Pharisees also in the law of עדים וזוממים (Ritter, 26, n. 1).

<sup>129</sup> See Freudenthal, *Hellenistische Studien*, I, 68 ff.; C. Siegfried, *Philo von Alexandria als Ausleger des Alten Testament*, Jena 1875, 278 ff.; Weinstein, *Zur Genesis der Agada*, II, 29 ff.; D. Neumark, *Geschichte der Jüdischen Philosophie des Mittelalters*, II, 70 ff., 84 ff.

the end of the sixteenth century, reintroduced him in Jewish literature, is now proved to be unfounded. The tenth century Karaite, Abu Yusuf al-Ḳirḳisani, in his work *Kitāb al-anwār wal-marākib* (written 937), speaks of a Jewish Sect named "the Magarites" (אלמגאריה). This sect, says Ḳirḳisani, sprang up before the rise of Christianity. The adherents of the sect make the biblical passages that speak of attributes of God refer to an angel who, according to them, created the world (ed. Harkavy, 304). Among them are the works of the "Alexandrine" (אלאסכנדראני) which are the best of the "Books of the Cave" (*ib.*, 283). The same author, speaking of Benjamin Nahawendi whom he considers the second founder of Karaism, says that Benjamin's belief that an angel created the world is similar to the view held by the Alexandrine (*ib.*, 314). Harkavy ingeniously suggested that these "Magarites" are the Egyptian Essenes, known as the Therapeutae. The "Alexandrine" whose works they so highly estimated is *no other than Philo* (*ib.*, 256 ff.) and Nahawendi's "Angel" goes back to Philo's "Logos" (comp. Poznański, *REJ.*, L, 1905, "Philon dans l'ancienne littérature judéo-arabe," where all the material is collected and discussed). The view that some of the works of Philo were known to the Jews in the eighth, ninth, and tenth centuries—the period of religious unrest among the Jews and the birth of Jewish religious philosophy—is shared by many scholars. See Bacher, *JQR.*, VII, 701; Hirschfeld, *ib.*, XVII (1905), 65 ff.; Poznański, *l. c.* (see *id.*, אורח ישראל, III, 128a); Eppenstein, *MGWJ.*, LIV (1910), 200; D. Neumark, *Geschichte der jüdischen Philosophie des Mittelalters*, I, Berlin 1907, 128, 133, 560, 568; II, 372 and 466 ff. Among Philo's (the "Alexandrine's") works—which, as Ḳirḳisani informs

us, were eagerly studied,—might have been those that contain Philo's expositions of biblical laws; Philo thus influencing, not only the theological views of the first Karaite philosophers (Benjamin Nahawendi and his followers), but also their interpretation of biblical laws and their practices.<sup>180</sup>

<sup>180</sup> The allegorical method of interpretation, characteristic of Philo, was popular also among the Karaites; see Weiss, *Dor*, IV, 86 and Poznański, *MGWJ.*, 1897, 208, n. 1; comp. also H. Hirschfeld, *Jefeth b. Ali's Arabic Commentary to Nahum*, London 1911, 8 and 10 ff. The Karaites share also the view of Philo that the Decalogue is the text on which the whole Law is but a commentary (this view is found also in the later Midrashim; see the references by L. Löw, *Ges. Schr.*, I, 42. A similar view is found in p. Shekalim 6, 1. Reifmann, *בית הלל*, I, 350 and Weiss, *Dor*, IV, 141 are to be corrected accordingly). Saadia Gaon proved to them by it the possibility of an oral law (comp. Weiss, *Dor*, IV, 141) and the Karaites Nissi b. Noah (eleventh century; see lastly Harkavy, *ס"המ לענן*, intr., VII) and Judah Hadassi (twelfth century) arranged their works, like Philo, according to this view.

The Karaite Zerah b. Nathan (end of sixteenth century) was much interested in the works of Philo (Neubauer, *Aus der Petersburger Bibliothek*, 75, 125). The famous nineteenth century Karaite Abraham Firkowitsch indeed asserts that Philo was a *Karaite* (preface to *מבחר ישרים*, 2a), but, according to him, Jesus was a Karaite likewise (*תכנית*, appendix to *מבחר ישרים*, 54a, 56a; Kirķisani, ed. Harkavy, 305, 9 and Hadassi, *JQR.*, VIII (1896), 436 state that Jesus was a Sadducee); comp. I. B. Levinsohn, *תערי הסופר*, Odessa 1863, 18-9.